(30)

No. 01-1289

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,

Respondents.

ON WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

JOINT APPENDIX

Volume II of VII (pp. 499a-1081a)

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[Vol. 8, R. 10263, commencing at p. 37]

* * *

PAUL BRENKMAN called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q Are you here today because you've been subpoenaed to be here?

A Yes.

Q What is your current employment?

A I work for Allstate Insurance Company.

Q What's your position there?

A Market claim manager.

* * *

[39] * * *

Q Now, the jury's already heard that there were two different policies that applied to the Ospital part of the case, the Farmers policy that was on the car with limits of $30,000, and would you explain how the Allstate policy applied to the Ospitals.

A Todd Ospital was driving a borrowed car. The borrowed car belonged to a person named Brooks, so Brooks was insured by Farmers, therefore they were the primary insurance carrier and had a policy limit of $30,000. In a case that has greater value than that, Ospitals' policy of $100,000 would, therefore, take effect as a secondary layer of insurance.

Q So Allstate's policy kicked in, so to speak.

A Yes.

Q If the exposure got above the $30,000 Farmers [40] policy.

A Yes.

Q Did Farmers make a decision very early on to put their $30,000 up and make it available on the case?

A They did make a decision relatively early.

Q And from that point on, was it basically up to Allstate to decide, then, what to do with the case?

A Yes. It was up to Allstate. Obviously that was conditioned that that would settle any requirement that Farmers had in the claim.

Q Did you pretty well take over management of the case from that point, on?

A Yes.

* * *

[42] * * *

Q Now, as you reflect back on what happened a number of years ago, the case progressed, more information was gathered through depositions, and so on and so forth. Once the facts were pretty well in, how did you assess this case as far as whether Campbell would be found at fault, whether Ospital would be, or whether both may be found at fault? What was your assessment?

A My personal opinion was that Campbell was the at-fault party.

Q Did it surprise you that the verdict was consistent with that in Logan?

A No.

Q As the facts came in, did you become aware of what Mr. Slusher's injuries were, and just how [43] extensively he was injured?

A Yes.

* * *

Q How serious of an injury case was this?

A Very severe, because it affected not only the nature of pain and suffering and those kinds of things, but had an economic impact involved with it that would perhaps carry on into the future.

Q What do you mean by the economic impact?

A Mr. Slusher was a welder by occupation, he was very young at the time of the accident, I'm thinking twenty-five, twenty-six years old. He, being a welder by occupation, takes a lot of manual dexterity. He had [44] numerous injuries. The one that I was the most concerned with, the radial nerve in the arm was severed. I guess I felt that he would never have full and complete use of the arm, and therefore would not be able to be a welder again, so that had a very large economic impact.

* * *

[51] * * *

Q Now, in handling this matter, did you become [52] aware of factors affecting the value of Todd Ospital's death claim?

A Yes.

Q And what were those?

A A wrongful death claim, according to my understanding, is a derivative action. And what it amounts to is what the parents, what those heirs have lost. And Mr. Ospital was an outstanding young man.

Q What did you understand about him?

A At his high school, which I'm very familiar with, I went there myself, he was the star athlete in the high school, and simultaneously was a sterling scholar. A really unusual combination. And then he made a very tough decision whether to pursue an athletic scholarship, which was certainly available, or whether to pursue an academic course of action, and he chose to set the athletics aside and put his full-time efforts into his academic study.

As I investigated that case, everything that I learned about him, I was remarkably impressed. He was the kind of person that would make every parent proud.

Q Was the information you've just described available to all of the attorneys that were involved in handling the case, as well as the insurance companies?

A I received the information by way of taking [53] statements, just the kinds of things people would say, in investigating the liability facts. So I assume they were available to anyone who would have taken statements from those same individuals.

Q Now, as you've indicated that as the facts became known, you viewed Mr. Campbell as primarily responsible for the accident. Were efforts made to get his insurance company, State Farm, to participate with Allstate to get the claim settled?

A Yes.

Q Did State Farm refuse to do so?

A State Farm indicated they did not believe their party was at fault, and therefore chose not to settle.

Q After State Farm's position on settlement became clear, did Allstate, partially using money from Farmers, go ahead and settle with Slusher?

A Yes.

Q Now, if you thought the accident was Campbell's fault, or primarily Campbell's fault, why did you pay $65,000 to settle?

A Two issues. Cost and avoidance of risk, and trauma to the policy holder.

Q Would you explain what you mean by that, please.

[54] A When you litigate a claim, there are a lot of attorneys fees involved, legal actions, the securing of witnesses, doing all of those kinds of things. So literally you can spend as much as what you would pay on a claim, just bearing all of the costs. So that is the cost side of the equation.

The second side of the equation is that you purchase insurance to protect you from financial risk, and the concern that I had, the way the liability law was constructed at the time, it treated a party so harshly that, the imaginary 1 percent at fault issue treated them so harshly that there could be a risk, notwithstanding the fact that it was very small, in my view, there could be a risk that there would be an excess judgment versus our insured.

So on that basis, it becomes an economic decision. We made the economic decision to settle it.

Q Now, between Allstate and Farmers, there was a total of $130,000 in insurance available for the Ospitals?

A Yes.

Q And would even 1 percent fault placed on Ospital allow that $130,000 to be collected by Mr. Slusher?

A It could.

[55] Q And you were able to settle for $65,000, which, if my quick math is right, is half of this.

A Yes.

Q Did the fact that Mr. Slusher's attorney ~~and Mr.~~ Slusher agreed to take half of this amount, did that indicate anything to you, as an experienced insurance manager, as to what they thought their chances were of getting even 1 percent on Mr. Ospital?

MR. SCHULTZ: Object, calls for speculation.

THE COURT: Overruled.

THE WITNESS: During the course of settling a claim, you have a lot of discussion with opposing counsel, where you argue the merits of the case, and I made substantial argument that I felt our party would be zero percent at fault. I have to assume, and that's all I can do is assume, I don't know what the other party's thinking, but I have to assume they --

MR. SCHULTZ: I would renew my objection, then, Your Honor. I think it is speculation.

Q (BY MR. CHRISTENSEN) As you make these settlement decisions, do you make assumptions as to what the other side is considering and thinking so that you can make your own decisions, your own offers?

A Yes.

Q And was that part of what was going on, here, [56] was trying to assess how Mr. Slusher and his attorney were assessing the case, as well as how you were assessing it?

A Yes.

Q What did the fact they would take half of this tell you about how strongly they felt they could put even 1 percent fault on Mr. Ospital?

A All it told me is that they chose to settle for less than the full amount. I had my reasons that I felt they would not find Mr. Ospital to be at fault. I suppose that causes me to conclude that, likewise, they don't feel they're going to get him, either.

* * *

[66] * * *

CROSS-EXAMINATION BY MR. SHULTZ:

* * *

[67] * * *

Q Let me just show you a copy of a letter, it's dated September 27th, 1982. This is from Mr. Humpherys, addressed to Mr. Ospital. Does it indicate there that a copy would have been sent to Allstate by way of Celia Hart?

A Yes. There's an indication that there's a carbon copy to Celia Hart and Mark Everts.

MR. SCHULTZ: Your Honor, I think we have a stipulation that that can come into evidence, and I'll just move on.

THE COURT: It'll be received.

MR. HUMPHERYS: It's already in, but I think we're stipulating to having it as a separate exhibit.

MR. BELNAP: What number would that be?

THE CLERK: 118-D.

(WHEREUPON Exhibit Number 118 was received into evidence.)

* * *

[69] * * *

Q I'll just represent to you that on the basis of the facts that were apparently presented at the Logan trial, Mr. Barrett asked the jury up there to consider awarding about $5,000 with respect to Mr. Slusher's inability to work. That's something you were not made -- Or you didn't know, I take it, before today?

A No, I didn't know that.

* * *

[70] * * *

Q And in looking at the trial transcript, my recollection is that you testified -- and I can show you this if you want to look at it -- but I'll just represent to you that, setting aside any wage loss claim, your testimony was that you felt Mr. Slusher's claim had a value of about $100,000 for general damages.

A That was my belief back at that point in time, when the accident occurred, yes.

* * *

[82] * * *

Q And so just very briefly, here, if a jury were to find Mr. Ospital anywhere from 50 percent at fault up to 90, or anything above 50, would Mr. Campbell have been liable for any damages to Mr. Ospital?

A No.

[83] Q Or to the Ospitals, I should say?

A In that scenario, no, he wouldn't. I obviously didn't ever look at that scenario because that was not the way the fault issue was.

Q Right. But I just want to make sure that the jury understands this comparative fault statute relieved a defendant of any liability if the person suing him was found to be 50 percent or more at fault.

A That's correct.

* * *

[89] * * *

Q There was some testimony earlier in this case -- And let me ask you this first. You've had a lot of experience with analyzing auto accident cases, I assume, over the years?

A Quite a bit, uh-huh.

Q Do you understand that the speed of a vehicle can be an important fact in analyzing an automobile accident?

A Yes.

Q Do you understand that when a vehicle is traveling at a higher rate of -- Relatively speaking, the higher the vehicle's speed is, the more feet per second that vehicle is going to travel?

A Yes.

Q And do you understand that if a vehicle is traveling at an excessively high rate of speed, that that vehicle will arrive at a point on a highway sooner than another driver might expect it to if it was traveling at the speed limit?

A Yes.

Q Let me just -- Are you familiar with the [90] concept that distance traveled in feet per second is usually about one and a half times the vehicle's speed?

A Yes.

Q So if a car is traveling at 55 miles per hour, it will cover about, let's say about 83 feet per second?

A Okay.

Q And if a car is traveling 80 miles per hour, it will cover about 120 feet per second. Correct?

A I'm guessing. I always look at a chart. Okay, but --

Q We took half of 80 is 40 and added that --

A I don't know if that geometrically follows all the way through the equation. This is an engineer you're talking to, so roughs bother me, okay?

Q Okay. This would turn out to be a difference of about 37 feet per second, correct?

A Yes.

Q Okay. Now, if we had a car coming in this direction at 80 miles per hour instead of 55 miles per hour, over a period of 10 seconds, given this differential, that car would travel, what, 370 feet farther down the road at 80 miles per hour than it would at 55?

A Uh-huh.

[91] Q So if the vehicle was going 55 in that same period of time, it would be 370 feet further back up the road than it would at 80 miles per hour. Is that right?

A Yes, if you're talking about a hypothetical, yes.

Q Okay. Now, there's been some testimony in this case that it wouldn't matter -- Well, strike that. Let me ask you this.

Just assume, for a moment, that Mr. Ospital was, indeed, traveling 80 miles per hour, instead of 55 miles per hour. In a period of 10 seconds, then, would it be accurate that he is going to be 370 feet closer to Mr. Campbell, or to the point of the accident, at 80 miles per hour, than he would have been at 55 miles per hour?

A For purposes of answering the question you've asked me, that would be correct. However in doing the liability analysis, I gauge that as being a wrong assumption in this case. There was an investigating officer who suggested high speed. The facts did not present that to me as I examined them.

Q You did not agree with the investigating officer's opinion?

A I did not agree with the investigating officer's opinion, correct.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF WILLIAM S. BROWN, JULY 11 & 12 & 18, 1996

[Vol. 22, R. 10277, commencing at p. 201]

* * *

WILLIAM S. BROWN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Brown, will you tell us your full name and the city you reside in, please?

A It's William S. Brown, I live in Colorado Springs, Colorado.

Q And who are you employed by, Mr. Brown?

[202] A State Farm Mutual Automobile Company.

Q Okay. And how long have you worked for them?

A A little over thirty-one years.

* * *

Q And currently the job that you have with State Farm, is that in the management position over claims?

A Yes, I'm called bodily injury claims superintendent.

Q And is that in the Colorado Springs area?

A Yes, it is.

Q And in that job, do you supervise people that meet with and deal with the public?

A Yes, certainly.

Q Now, at State Farm -- and we'll be getting into this a little bit more tomorrow, Mr. Brown -- did you go through schools and training to qualify you to start your career at State Farm?

[203] A Yes, with State Farm, your first training at that time, many years ago, there was a four-week training school, or claim school in Bloomington, Illinois.

Q And have you worked as a claim representative, where you're the person actually handling the claims?

A Yes, I spent five years in Tulsa, Oklahoma as a bodily injury claim representative.

Q And have you also worked as a, in any other jobs besides a claim superintendent's job and a claim representative?

A Yes, I was a divisional claim superintendent in Utah and in Colorado from, I guess 1979 until 1990.

Q And were you a divisional claims superintendent when the Campbell accident happened in May of '81, and a lawsuit occurred and a trial resulted?

A Yes, I was.

Q And in the course of being divisional claims superintendent, did you have, did you work with an employee by the name of Ray Summers?

A Yes, I did.

Q And ultimately, Mr. Brown, was Mr. Summers given the option, in the spring of 1982, more than a year and a half, well, a year and a half before the [204] Campbell case was tried, to either early retire from State Farm, or be terminated?

A Yes, he was.

Q Now, Mr. Brown, was there anything about the termination of Mr. Summers that was in retaliation for, or related to his handling of the Campbell case?

A Absolutely not. Mr. Summers left State Farm, I believe it was some sixteen months prior to the Campbell trial, and it had absolutely nothing to do with his dismissal or retirement.

Q I want to talk for the next fifteen minutes, or however long the court would like us to go this afternoon, about some claims that Mr. Summers made to this jury a week or two ago.

Have you had an opportunity, Mr. Brown, to be advised by counsel of the allegations that Mr. Summers told this jury about with respect to some specific cases that he used as examples of alleged improper handling of claims by State Farm through him and others?

A Yes, I have.

Q And in that regard, there was used by counsel a document that goes through nineteen paragraphs of alleged bad practices on the part of State Farm. Have you seen this document?

A Yes, I have.

[205] Q Mr. Brown, I want to take you, first, to a case that Mr. Summers referred to as the Carlson case. All right?

A Okay.

Q And I'll represent to you, Mr. Brown, that Mr. Summers claimed that this case was an example, quote, of downplaying injuries, or -- Let me just check my notes, please. Yes. Downplaying injuries or concealing the nature and extent of the injuries in order to cast doubt on settlement value, especially where the claimant or insured is at a disadvantage, such as experiencing financial difficulties, or has trouble communicating.

And I want to put up to the jury the trial transcript in Mr. Summers' own testimony, so that you'll be aware of this, Mr. Brown, as we work through this. And I'm referring to page 230 of the trial transcript. And as I work through this --

MR. BELNAP: Your Honor, would it be appropriate if we went off the record for a minute to the jury, or let the court reporter explain that some of the language in here is phonetic that will be seen in this transcript?

THE COURT: You can explain it on the record.

MR. BELNAP: Okay. Some of the language in [206] this transcript -- and I don't understand how the court reporter works, but some of it is phonetic -- and so there may be some

words that you'll see in there that don't make sense as she tries to type this out and catch us as we talk at the speed that we do. Starting right here --

THE COURT: Mr. Belnap, let me interrupt and just say, just so the jury can appreciate the process, we actually have real time testimony that's taken. I can look at this computer screen, as can counsel, and within just a matter of almost a second, can see what's here.

And it's very difficult to imagine the technology that allows that, but it also means that in trying to take these words down it's not always possible to put them in the proper grammatical form. And so at some point there's a corrected transcript that comes out, and it actually comes out very quickly, which is perfect. But I think we're talking about the transcripts that come off almost real time, and that's why we have that.

MR. BELNAP: What we do, as Your Honor is aware, is at night the court reporter assists giving us a disk that we take before she has an opportunity to go through and edit it and make these phonetic corrections.

Q (BY MR. BELNAP) Having given that [207] explanation, Mr. Brown, and having read this item number 6 off of Mr. Summers' allegations, I want to go to page 230, where Mr. Humpherys asks Mr. Summers if this category was one of his categories, and asked him, on line 18, "Can you relate now a case which illustrates how there was unfair advantage taken of someone who was at a disadvantaged position?"

Answer. "One very flagrant file involved an insured by the name of Carlson who had a son that had an emotional break, and attempted, in the family car, to commit suicide at a high rate of speed."

Moving down, "The following day he walked away from the hospital, walked two blocks, got in a car," et cetera.

Moving down to the bottom of that page, that, and that would be Thad Carlson, the father, "Scott walked about several hundred yards east of the accident scene, and as a large semitrailer came down the canyon at a relatively high rate of speed, the boy dove under the wheel and suffered very minor injury. Technically three different accidents. I reported them verbally by telephone to my superintendent."

Answer. "Who was that?"

"Tom McGlinn. And told him a very severe exposure, and he said, 'Do nothing on the file. It's an [208] intentional act. The boy intentionally tried to do harm, therefore there is no coverage.'

"I said, 'Wait a minute, the boy is ill, he was hospitalized.'

"He said, 'Follow my instructions.'

"I talked to the named insured, Thad Carlson, with whom I was personally acquainted, and told him that there was a coverage question because of an intentional act of the insured, and I needed to get a non-waiver, which I obtained."

Going to the next page. "I was instructed to not offer even the PIP benefits under each of the three instances because there were three separate accidents. I was told not to discuss with the insured or anyone else relative to the involvement of the accident. I was told to remove from the file the photographs of the accident scene, which never were included in the file. The diagram which was prepared, to my knowledge, was never included in the file. I was also told not to offer any opinion as to the possibility of coverage, but to downplay, withhold the evidence from the insured, and in particular, not to disclose or divulge any content to the claimants that were involved with the fatality."

Now, having put that up on the board, Mr. Brown, did you look at the file that Mr. Summers was [209] referring to, here?

A Yes, I did.

Q Mr. Brown, with respect to this file, do you have an understanding if these files were compiled because Mr. Summers had testified to them in his case against State Farm?

A That the files themselves were compiled?

Q Yeah, that the files were saved, basically?

A I'm not absolutely certain. That's my general understanding, but --

Q All right. Having reviewed that file, Mr. Brown, can you tell the jury whether or not what Mr. Summers claimed to this jury under oath was true or not true?

A They were not true.

Q Okay. And I don't expect, at this point, them to take my word for it, so I would like to walk through this file as to those allegations that Mr. Summers had made.

First of all, Mr. Brown, were all of the individuals in this case represented by an attorney?

A I believe that they were, yes. Are you talking about the individual claimants?

Q The claimants, the people injured, had Pat Patterson.

[210] A Yes.

Q The Thad Carlson family had Brent Hoggan as a lawyer; is that right?

A Right.

Q And then there were claims made against the hospital for the boy getting out of there and doing what he was able to do, and they had counsel.

A Yes.

Q Now, does Mr. Summers go on to provide and talk about potential liability issues that he claims he was not to discuss, including talking about the hospital?

A Yes.

Q He claims that he was told not to discuss anything about possible settlement of the case, or coverage issues. But Mr. Brown, can you identify whether this memo involves you as a divisional claim superintendent?

A Yes, it does.

Q Did this come from the file?

A Yes.

Q Did you just make this up, Mr. Brown?

A No.

Q And I'll represent to you we have given copies of this to counsel. Let's read through this. [211] "Today I received a phone call from Wendell Bennett indicating that he has successfully negotiated an agreement to settle all tort claims." That means the injury claims?

A Yes.

Q "Including the fatalities, as well as the injuries in the adverse vehicle, for $50,000. He has also secured an agreement with Mr. Fillmore, the attorney for the Carlson family, not to present a claim under the no-fault benefits for the injuries incurred by Scott when he dove under the wheels of the semi." Have I read that correctly?

A Yes, sir.

Q So the attorney for Mr. Carlson agreed that, as part of this compromise settlement, they would not present a claim for no-fault benefits; is that correct?

A Yes.

Q Is what Mr. Summers said about that true, Mr. Brown?

A Absolutely not.

Q Now, this settlement, Mr. Brown, was for the policy limits under the policy, and this authority came from Thomas McGlinn, the person that Mr. Summers claimed had told him that there would be no authority given on this file; is that correct?

[212] A Yes, that was our total limits.

Q Now, do you recall in the allegations that Mr. Summers made, was that he was to claim that there was no coverage for these acts, and he was not to discuss anything relative to coverage.

A Yes, I recall that.

Q Now, Mr. Brown, if State Farm, as he claims, was telling him to do that, would you expect, as he claimed to this jury, that they would hide any discussion about that fact from the file?

A No, and you couldn't hide it from the file. Particularly if you're going to pay your policy limits.

Q Would you expect, if you were believing Mr. Summers, that State Farm was telling him, "We're not going to pay, and we're not going to discuss anything about the case because there's no coverage," would you expect that they would hide that from the file?

A No.

Q Okay. Let's talk about what was in the file, in view of what Mr. Summers said he was told not to discuss and not have anything in the file about the coverage issue. I want to show you a letter from Mr. Wendell Bennett to Thomas McGlinn. February 26th, 1981.

"Mr. Fillmore, Carlson's attorney, was [213] willing to allow us the additional time to make further inquiry into this matter before filing the declaratory action with the agreement that he would not then claim that we had delayed in filing the action."

Now, that may not make sense right now, but I want to go to a couple of letters that will explain what is being discussed. That letter that I just put up on the board, Mr. Brown, was dated February of 1981.

I want to put a letter up from Mr. Bennett to Mr. McGlinn. Do you have an understanding as to whether or not State Farm asked an attorney for an opinion on whether or not there would be coverage in this case?

A Yes, we did.

Q And was this opinion in the file?

A Yes, it was.

Q "Based upon the information we have developed to date, it would be my opinion that we probably have no valid policy defense to assert, and based upon the cases, that even though Scott Carlson may have been insane at the time of the accident, that would not relieve him of liability to an innocent third party."

Now, Mr. Brown, if State Farm was attempting to get out of this case, as Mr. Summers claimed, by claiming no coverage, would you expect, if you believed his testimony, that you would find this letter in the [214] file?

A No, you wouldn't. That clearly shows that there would be coverage.

Q And was, in fact, coverage extended on this case, and paid?

A Yes, it was.

Q Do you recall the allegations of Mr. Summers -- and let me get to them, again -- right here, Mr. Brown. "I was told not to discuss -- " Excuse me, let me go down two lines.

"I was told to remove from the file the photographs of the accident scene, which were never included in the file, the diagram that was prepared, to my knowledge, which was never included in the file." Do you see that?

A Yes, I do.

Q Mr. Brown, when you opened this file, what was in there, among the other things that we've pointed out to this jury?

A Well, two very clear things were in there. The photographs of the scene were in the file, and the diagram was in the file.

Q Can you tell this jury whose writing is on this diagram?

A It's Ray Summers' writing, yes.

[215] Q Did you go and prepare this, Mr. Brown?

A No, I did not.

Q Did you go and find this in some secret location, or was it sitting right in the file?

A It was in the file.

Q Was there also in the file a BI preliminary report?

A Yes.

Q And does this BI preliminary report talk about the fact that there is going to be an investigation to determine whether this was an intentional act, or whether there would be coverage extended on a coverage question?

MR. HUMPHERYS: Your Honor, there's been a lot of leading, and I understand we're trying to move along, but I think it's important that we get the witness' testimony, without all of the suggestion from counsel.

MR. BELNAP: Your Honor, I don't think I've -- If I've been leading, I will try to rephrase that.

THE COURT: All right.

MR. BELNAP: I think I've been trying to lay foundation as I go through, without having to put things back up on the board. But I'll be mindful of that as I [216] proceed.

Q (BY MR. BELNAP) Does this indicate that there's going to be some looking at, with respect to a coverage question?

A It's a little bit difficult to see from here, but let me glance at it real quick, here.

Q Let me read it to you. "Telephone referral to Ogden to accumulate available information claimants without contact pending resolve of coverage question re an intentional act."

Now, from the information that we put up on the board, did State Farm request an opinion from an attorney on that point?

A Yes, we did.

Q And what did that attorney tell State Farm?

A The attorney recommended that we extend coverage on it.

Q Okay. Now, Mr. Brown, you've indicated to the jury, as we looked at Mr. Summers' allegations, that he claims, among other things, that the photographs were removed from the file. Were these photographs in the file when I used the name of the case and asked you to identify this file and look at it?

A Yes, they were.

* * *

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* * *

WILLIAM S. BROWN the witness on the stand at the time adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q Mr. Brown, when we left off last night we were talking about the Carlson case. Do you recall that?

A Yes.

Q This is the case with the unfortunate situation of the young man who had a mental break; is that right?

A Yes, sir.

[5] Q Now, in Mr. Summers' investigation of this case, when it was initially assigned to him, you'll recall that in his bodily injury preliminary report he indicated that there was a potential coverage question. Do you recall that?

A Yes.

Q Without getting into a lot of detail on that, Mr. Brown, in the state of Utah, when you buy an insurance policy, this paragraph says, "Contact pending resolved of coverage question re an intentional act by insured." In the state of Utah, I'll represent to you the law is you cannot cover intentional acts, and I don't think plaintiff's counsel would dispute that. Is that your understanding?

A Yes, you cover accidental damages.

Q And so if there was a determination that this young man had sufficient control over his mental processes and the decisions that he made, there was a potential question, there, whether his act was intentional or accidental because of his mental functioning. Is that your understanding?

A That's right.

Q And did State Farm seek an opinion that we showed to the jury yesterday to get a legal opinion on that case?

[6] A Yes.

Q And ultimately were the policy limits paid on that case, as we discussed yesterday?

A Yes, they were.

Q Now, Mr. Summers had claimed, among other things that we went through yesterday, that State Farm took advantage of someone in a distressed situation, Mr. Brown. Can you tell us, from your review of the file, whether or not you perceived, or from your review of the file did it appear that State Farm had taken advantage of anyone, or the opposite?

A There was no indication at all that anybody was taken advantage of in this case.

Q And those policy limits were paid around the time period of the spring of 1981; is that right?

A I recall it was in April, yes.

Q Okay. About the same time, within a short period thereafter, the Campbell accident happened.

A It would have been about a month before the accident, yes.

Q Now, I'm holding in my hand, Mr. Brown, a file out of a box of files, and we've made copies and given these to counsel. Is this what a State Farm claim file looks like?

A Yes.

[7] Q Now, is there -- Let me strike that and we'll be moving into that particular file in a minute. Is this the original Carlson file that I'm holding in my hand?

A I'm assuming that it is.

Q Okay, sorry.

A All right. Yes, the top one and the bottom one were Mr. Summers' field file, and the middle one was what we call a master file.

Q Okay. I next want to move to a case called Gittens. Now, there's a couple of Gittens cases, isn't there, Mr. Brown?

A I think there were several in the past, but a couple you're talking about.

Q This one is different than the Gittens case that Mr. Summers testified that there was a release and there was a lawsuit that resulted from it, isn't it?

A That's a different individual, yes.

Q Let me just have you hold onto that original file for a minute. Let me just put up on the board, here. Is this the Gittens versus Tingley case that Mr. Summers talked about in his deposition?

A Yes.

Q Now, the allegations that he made was that State Farm ignored legal protocol, such as a requirement [8] for court-approved settlements for injuries to minors. Do you recall that?

A Yes.

* * *

[9] * * *

Q (BY MR. BELNAP) With respect to this Gittens case, did Mr. Summers claim that State Farm had failed to follow legal protocol, such as requiring court-approved settlement?

A Yes, that was one of the allegations.

Q Now, in that case, Summers claims that he was instructed to ignore liability, to leave open the PIP benefits, let cause rest with the other vehicle, ignore the court-approved settlement, and require an indemnifying release from the parents of the children. Is that the allegations as you understood them, Mr. Brown?

A Yes.

Q Now, can you tell this jury if you reviewed the Gittens file?

[10] A Yes, I did.

Q Does that file, did the parents of the children provide State Farm a written report, a letter, indicating that the children had had treatments right initially following the accident, and that they were fully recovered as a result of that?

A Yes, they did.

MR. HUMPHERYS: Your Honor, we're dealing with extensive leading questions, here, and I don't think it's proper, given the nature of these subjects.

MR. BELNAP: I'll rephrase it, Your Honor.

THE COURT: All right.

Q (BY MR. BELNAP) With respect to the file, can you tell us what, if there was a letter in there from the parents, and what it provided, Mr. Brown?

A There was a letter signed by both parents, the best I recall on that, and it provided the injuries of each of the individuals, including the mother, as well as all the injuries of the children. And then it indicated the current status as of that time, which I recall was about two months after the accident. The current status of the injuries.

Q Now, did State Farm, can you tell us whether or not State Farm ended up paying all of the medical expenses that were incurred by each of those people that [11] were in the car, and payments to the parents, as well, for their injuries?

A State Farm ended up paying, I believe, general damages to, I believe, everyone in that case, in addition, including the parents.

Q You can go ahead and look at your file if you need to, Mr. Brown. Let me ask you, was there a payment made to the mother in the amount of approximately $5,064?

A I recall a payment made about that amount, yes.

Q Was there a payment made to John in the amount of $1,307?

A Yes, I believe that was the fourteen year old, uh-huh.

Q Rebecca, was there a payment made to her?

A Yes.

Q And Michael?

A Yes.

Q And Amanda?

A Yes.

Q And were medical expenses left open to them from their own insurance company, if you recall?

A Yes, I recall, I believe that was Idaho Farm Bureau.

[12] Q Now, when you leave medical expenses open from a person's own insurance company, Mr. Brown, can you tell us whether or not that potentially obligates State Farm to additional payments down the road?

A It certainly does. It's saying you will acknowledge what we call subrogation, meaning the other insurance company can come back to us, and we will pay whatever they paid to the folks, up to their limits.

Q Let me move to the Miller file. I'll get that back from you. This is a file that Mr. Summers referred to as the Miller-Shoop case. Do you recall meeting with counsel to review the allegations in his trial transcript about this case?

A Yes.

Q Now, with respect to this file, Mr. Brown, did you use the same procedure in this file that you did in the two that we've already reviewed, and will review hereafter, in terms of reviewing the testimony of Mr. Summers?

A Yes, I --

Q Or his allegations?

A Yes, I reviewed his allegations.

Q And then did you review the file to compare his allegations with the file?

A Yes, I did.

[13] Q All right. With respect to his allegations -- and I'm trying to speed this up -- but did they come from the trial transcript that was prepared by the court reporter?

A Yes, they were.

Q And his allegation from his list of nineteen subtopics that counsel put up on the board was that he was alleged to downplay, or ignore liability and/or negligence of insureds, hence liability of State Farm, to artificially create more advantageous settlement position with respect to the facts of this case. Can you tell the jury, just very briefly, about the facts of this case, Mr. Brown?

A Well, can I refer to this just one second?

Q You can, just briefly.

MR. BELNAP: I could speed this up, Your Honor, if I could just lead for foundational purposes on this one item.

THE COURT: Go ahead and do it, and if counsel has a problem when you begin leading, I think he'll object.

Q (BY MR. BELNAP) Did this case involve an accident where a State Farm insured was driving under the influence of alcohol, crossed over the center line and hit another vehicle?

[14] A Yes.

Q All right. And with respect to this case, Mr. Summers alleged that he was instructed, or did he allege that he was instructed to downplay and not mention in the file that there was drinking?

A Yes, he did.

* * *

[16] * * *

Q (BY MR. BELNAP) . . . Let me ask you, with respect to this Miller-Shoop case, did you review the trial transcript?

A Yes, I did.

Q Did you review the file?

A Yes, I did.

Q When you reviewed the file at counsel's request, did you make some handwritten notes?

A Yes, I did.

[17] * * *

Q (BY MR. BELNAP) Mr. Brown, I've handed you a set of handwritten notes. Are those notes that you've prepared?

A Yes, they are.

Q Can you just tell us if they reflect -- Do those notes reflect the allegations that Mr. Summers made from the transcript?

A Yes, they do.

Q Can you tell the jury what those allegations were that Mr. Summers made from the transcript as you reviewed it?

A And I've tried to write these down as close to the transcript as possible, but there may be some [18] paraphrasing or a little bit in here, because I wasn't anticipating this in here.

First of all, "I said my instructions were to downplay and not to mention in the file that there was drinking. I was told to take out of the file the statement that indicated the places he had been drinking, and for the period of time that he had had, in his own attestation, as to the use of drugs that was not included in the file."

This was kinder verbatim, so I'm sorry, it may not make a lot of sense.

"I was further instructed not to offer the PIP benefits to the mother for a death benefit for the child's death under the provisions of her own policy. I was told definitely not to offer more than the medical part of the personal injury provisions of her policy. I was directed that she was not to have a loss of income allowance, because she was not employed at the time, and the day of the accident. But she had been employed by the dentist's office and was to report for employment. But because of her injuries was deprived of that employment.

"I could not render her payment for that, nor was I to offer payment for loss of service allowance while she was incapacitated and unable to perform."

[19] Q All right, now, those are notes that -- Were those notes that you created as a result of reviewing the transcript, Mr. Brown?

A Yes, they were.

Q Did you then review the file to check it against Mr. Summers' allegations?

A Yes, I did.

Q All right, let me just show you this summary. Does this summary of the Miller-Shoop case summarize the notes that you just presented to the jury, with respect to downplaying and not mentioning in the file drinking, take out of the file the statement that indicated the places that he'd been drinking, take out of the file the period of time that, in his own attestation, had used drugs, not offer PIP benefits for the death benefit for the child, definitely not offer any more than the medical part of the personal injury provision of her policy, direct she was not to have a loss of income allowance, and not offer payment for loss of service allowance while she was incapacitated?

A I believe that's pretty much what he said on there. His own words were a little longer than that.

Q Okay. Having stated those allegations, Mr. Brown, I want to put up on the board, can you tell the jury if this is from the file that you reviewed?

[20] A This would have been from the combined liability report.

Q All right. And going back to this case, allegations of Mr. Summers, he claims he was instructed not to mention in the file that there was drinking. From this combined liability report, can you tell us whether or not that allegation was true, Mr. Brown?

A That allegation was obviously very false, as he states here that, "Insured Miller, allegedly DUI," which is driving under the influence, "with an indicated blood alcohol of .15 percent," and then later that, "There's a pending driving while intoxicated and automobile homicide charge against the insured."

Q He next indicates that he is to take out of the file the statement that indicated the places that the insured had been drinking. Do you see that allegation?

A Yes, I do.

Q Mr. Brown, having reviewed the file yourself, can you tell us, from your own personal knowledge, if Mr. Summers was told whether or not he was told to find out the places that this insured had been drinking?

A I believe -- I'm sorry, you're referring to number 2, take out of the file the statement?

Q No, take out of the file the statement that [21] indicated the places he's been drinking. My question to you is, was he asked to go find out the places that this person had been drinking?

A Yes, he was.

Q I'm going to put up on the board a memo. Can you tell us who the author of that memo of March 13th, 1978 was to Mr. Summers?

A I wrote that memo.

Q Can you tell the jury if this memo says, "I would appreciate your attempting to answer. Obviously, if insured Miller had only had a couple of beers, he would not have a blood alcohol content of .15. Therefore I would appreciate your checking out his story at the place where he was drinking the beer, or with whom he was drinking the beer."

Now, Mr. Brown, why were you asking him to check this out and mention the fact about having only had a couple of beers and the .15 reading?

A Well, we wanted to find out exactly how much he had been drinking, and to what extent he would have been incapacitated at the time.

Q Now, Mr. Brown, if you were instructing Mr. Summers to take references out of the file to drinking and where this drinking took place, and to not have it mentioned, would this have been in the file?

[22] A No, it would not.

Q Did you do those kind of things when you were at State Farm, Mr. Brown?

A No, sir, we've never asked anybody to leave something out of a file. We want the complete investigation in every file.

Q Let me go to the next allegation that Mr. Summers makes. Not offer PIP -- It's not the next one, but I want to go to this one. "Not offer the PIP benefits to the mother for the death benefit for the child under the provisions. Definitely not offer any more than medical."

Now, when we talk about PIP, that's no-fault?

A Yes.

Q All right. I want to put this memo back up, Mr. Brown. The second paragraph says, "I agree with your preliminary evaluation of this case, but would appreciate your giving suggestions as to the amount of payments expected under the PIP of the respective policies." Is that correct?

A Yes.

Q Is there anywhere in this file that you've seen from your review where you instructed Mr. Summers not to provide benefits?

A Absolutely not.

[23] Q Going on, Mr. Brown, Mr. Summers claims, "Not offer the PIP benefits for the death of the child." Do you see that?

A Yes, I do.

Q In this last paragraph, "The death claim of Melinda Shoop should have to be approved also." Do you see that?

A Yes.

Q Was that benefit extended on this policy, Mr. Brown?

A Yes, it was.

Q Were the allegations that Mr. Summers made in this case, under oath, to the extent that you've told the jury about your review to this point of this file, true?

A Those allegations were not true.

Q Going back to these allegations, Mr. Brown, "Definitely not offer any more than the medical part of the personal injury provision of her policy." What does that mean? Does that mean like not a general damage, or not a settlement?

A Yes, that's the way I would take that, yes.

Q Okay. I want to show you another document, then, Mr. Brown. Can you identify this memo of April 4th, 1978?

[24] A Yes, that's a memo that I wrote to Ray Summers.

Q Did this come out of the file that's sitting there on the counter next to the witness stand?

A Yes, it did.

Q "I am extending you a total of $30,000 authority under the Miller policy to settle the claims of Marsha Shoop, Troy Shoop, Nannette Shoop, Chad Shoop, and Melinda Shoop, deceased. Be sure to set this up for a court-approved settlement on Nannette and Troy and Chad, should their injuries be sufficient."

Have I read that correctly?

A Yes.

Q Given Mr. Summers' allegations that he alleges you told him definitely not to offer any more than the medical part of the policy, is that allegation true, Mr. Brown?

A That allegation is not true. We were paying our policy limits under liability.

Q Did Mr. Summers, in his own handwriting, prepare some documents following your direction to summarize the expenses on this file?

A I believe he did, yes.

Q Is this Mr. Summers' handwriting?

A Yes, that would be his request for authority.

[25] Q And at the bottom, here, can you tell, if I read that, "Recommended that policy limits be extended," and he's got written 30. That should have another zero by it, shouldn't it?

A He meant $30,000, I'm sure.

Q And did you extend the policy limits on this case?

A Yes, we did.

Q Did you ever instruct Mr. Summers, as he alleged, to not pay anything other than medicals?

A Obviously, no.

Q I want to put up a document dated March 29th, 1978. Is that signed by Mr. Summers and in his own handwriting, if you can tell us?

A Yes, it is.

Q In his own handwriting, where he's alleged to this jury that he was instructed to downplay and not mention in the file that there was drinking, can you tell us, if I can read this to you, if this is what he said in his own handwriting. "Brief facts. Miller, DUI, traveled left of center and hit the other Shoop vehicle."

A That's what he said, yes.

Q Does he go on to talk about, there's a wage loss and a services loss?

[26] A Yes.

Q Does that support his allegations, Mr. Brown, that he was directed not to have a loss of income allowance?

A No, that does not.

Q Mr. Brown, I want to put another document up here. Is this another memorandum from Mr. Summers in his own handwriting? Can you tell us?

A Yes, it is.

Q And is that addressed to yourself?

A Yes.

Q Dated March 21, 1978?

A Right.

Q Can you tell us, from your review of the file, if Mr. Summers is saying, "The attached bills are being submitted for payment, and reviewed with superintendent Brown for PIP authority up to $8,000"?

A Yes, that's what it says.

Q Do you see that?

A Yes.

Q Does this also go on to allege that, according to the insured at that time, that he had two to three beers?

A Yes, I believe that was in response to my earlier memo, asking him to obtain that information.

[27] Q What does it go on to say, Mr. Brown?

A It said, "He had two or three beers at the Haus, H-A-U-S, in Hyrum," and it gives the time limits on it. "He also said that he had some beers at home," and then it goes on to say that, "He also admitted to some Codeine tablets that were prescription for a back condition, and that he had had one or two tablets sometime after noon and prior to 6:00 p.m."

Q Now, Mr. Brown, if, as Mr. Summers has alleged, that you instructed him -- Let me rephrase that. Mr. Summers has alleged that you instructed him to downplay, and not mention in the file that there was drinking. Is that correct?

A That's correct.

Q That's correct, that's what he alleged?

A That's what he alleged, yes.

Q From your review of the file, Mr. Brown, is that allegation true?

A That allegation is totally false.

Q Were checks made out for the death benefit?

A Yes, they were.

Q And is that what I have up on the screen?

A Yes, over in the lower left-hand side, we use coding to indicate what coverages you're paying under. The 053 code there would be a funeral expense, and the [28] 056 code would be the death payment.

Q Now, this payment -- Let me go back to his allegations. This allegation, Mr. Brown, not offer the PIP benefits to the mother for the death benefit for the child under the provisions of her own policy, does that check have a relationship to that allegation?

A Certainly. The checks are to make the payments for those things that he says that we're not to offer.

Q And would that payment have been the limits under the policy? Or how does that work?

A Well, the funeral benefits are the amount that you spend on them, up to a certain amount, and then the other is just a designated amount.

Q That's a --

A The $2,000 one.

Q All right. So at the death of a child under your own policy, you get a payment; is that what you're saying?

A Yes, under the --

Q And then under your own policy you get an expense for funeral?

A Yes.

Q And then on the other side, out of the drinking driver's policy, was a payment made, as well?

[29] A Yes, that would have been out of the policy limits that we paid.

Q And that was the $30,000?

A Yes.

Q Mr. Brown, given your review of this file -- Let me see if I can find that. Were there wages and services paid in this case, Mr. Brown?

A Yes, they were.

Q And is that contrary to Mr. Summers' allegations?

A Yes, it is. My notes indicate, and I don't have a full listing of all the payments, but on 11-17-78, lost wages were paid for Marsha of $4,500.75. And the loss of services were paid for Marsha of $2,784.

Q I think I may have an overhead on that. Is that reflected on this overhead, Mr. Brown?

A Yes.

Q Are those coded down here in the left corner as wage payments?

A Yes, the 052 is a wage payment, and the 054 is a services, loss of services payment.

Q And what does that indicate to you, Mr. Brown, as to whether or not Mr. Summers' allegations about that point, in addition to the other ones that we've talked about that he's testified to under oath to [30] this jury, are true or not?

A They're absolutely not true.

Q And that document that we just put up on the board was a check from this file made to the person that had been injured for her services and wages?

A Yes. For Marsha Shoop.

Q I next want to ask you about the Goss file --

THE COURT: Counsel, would you approach, please, both of you?

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. BELNAP) Mr. Brown, the judge has given me permission to speed this up a little bit. I want to talk to you about the Goss file. I want to hand you your notes that were made when you and I sat down on this. Are those your personal notes?

A Yes, they are.

Q Okay. On this Goss case -- and I have a copy of the transcript right here -- have you reviewed the transcript under this case?

A Yes.

Q And I'll represent to you that this came--and I think you saw this, as well, Mr. Brown, but you tell me if I'm wrong--were you also working with me from that paragraph listing by Mr. Summers of his alleged bad [31] practices of State Farm on each of those categories?

A Yes. Both.

Q All right. His allegations, then, with respect to this case was, "The handling of cases of clear liability only under PIP, having the effect of limiting the insureds' and claimants' recovery to out-of-pocket expenses, and preventing payment of full and fair value of claims."

Now, I'll represent to you, Mr. Brown, that the trial transcript reflects that this is the accident where there were two or three college students from Utah State University. Do you recall this accident?

A Yes, I do.

Q And they went just across the border in Idaho, and had a few drinks, and picked up another passenger, a female passenger and were on their way back to Logan; is that correct?

A Yes.

Q And got in a one-car accident?

A Yes, they ran off the road.

Q Now, with respect to this case, Mr. Brown, did any of the, from your review of the file, did any of the occupants of that car receive any injuries that required treatment beyond an emergency room visit to have some cuts or abrasions looked at?

[32] A I can't remember how many treatments, to be honest with you, that they had on that.

Q Why don't you look at the file.

A I remember they were very minor. I think one had $290 worth, and another one $400 worth of bills.

Q Why don't you take the time you need to look at the file.

A Well, there's one bill here for the Budge Clinic for $23. Then there's the Logan Hospital and Franklin County Hospital. So I think the rest of them are hospital bills.

Q All right. Now, Mr. Brown, in the case, when you start talking about a case where four people have been at the same bar, and they know that each other have been drinking, and you decide, for whatever reason, that you're going to get into the same vehicle and allow one of those parties that you've been drinking with to also drive, is there a doctrine under Utah law that would, Utah or Idaho law, and across the country, that would apply to that, in terms of negligence?

A Yes, that would be the assumption of risk doctrine.

Q All right. And if you get into a car with a person that is known to have been drinking, under the doctrine as you understand it, as a claims person, is [33] there negligence that's attributed to the passengers for deciding to ride with a person who's been drinking?

A Yes, there is.

Q Do you see any problem, one way or the other, Mr. Brown, with State Farm having paid the medical bills of the passengers in this case?

A No. There's no problem with doing it. We did that, yes.

Q And did they pay all of the medical bills that were submitted?

A Yes.

Q And with respect to any other claim, given the fact that there was $200 for one, and I think you indicated three or $400 for another, and given the facts of this accident, do you see any improper handling in this file in having paid the medical bills?

A No.

Q Now, Mr. Summers' allegations claims that he was instructed to disregard the fact that it was an out-of-Utah jurisdiction, and to not mention liability and offer them PIP benefits under Utah jurisdiction.

Now, Mr. Brown, would the result, from your review of the file, have been any different, whether you handled this case under Idaho comparative negligence, or Utah comparative negligence, and the payment of the [34] medical bills, in your opinion?

A No.

Q And why is that?

A Well, it was my experience, and particularly going back to those years, that if you had assumption of risk, and you got in a car with somebody else that had obviously been drinking for quite a while, that bar can be claimed that that person might have for general damages.

Q Given the facts that Mr. Summers alleged, I want to specifically deal with those, was there any instruction in the file to the effect that he was alleging to this jury?

A No, there was no such instructions in the file.

Q Was -- Can you tell the jury from your review of the file, in Mr. Summers' own handwriting, was there a statement taken indicating that these people had stopped off on the side of the road, and had been approached by a police officer who asked them if they had been drinking?

A I believe there was, yes.

Q And --

A I recall that they said that there was drinking.

[35] Q And, according to Mr. Summers' statement, at least, who allowed them to continue driving and told them to go straight home?

A Yes.

Q Given your review of the file, Mr. Brown, can you tell this jury whether or not Mr. Summers' allegations of handling, quote, clear liability cases only under PIP or medical expenses, and preventing payment of full and fair recovery, is a true allegation?

A Well --

Q Let me ask that again. He has alleged that this was a clear liability case. Is that true?

A No, that's not true.

Q Why is that?

A Because of the doctrine of assumption of risk.

Q The drinking that you mentioned to the jury?

A Yes, the drinking, and getting in a car with somebody that's been drinking.

Q All right. And in an alleged clear liability case, handling that only under no fault, and limiting the insureds' right of recovery. Can you tell the jury whether or not that is a true allegation, from your review of the file?

A That wouldn't be a true allegation.

[36] Q Mr. Brown, I'm next going to a case where the insured was Holdridge, and the person on the other side of the case was Hadfield. And I'm handing you the original file and your notes that you created when we reviewed this matter. Is that the original file that you reviewed?

A Yes, it is.

Q And I'll represent to you, Mr. Brown, that I have the transcript from the trial. Did you review that?

A Yes, I did.

Q Now, just for example, Mr. Brown, I want to move quickly, here, but when you reviewed this transcript, Mr. Summers was going item by item on his list, was he not, with counsel?

A Yes.

Q All right. And this says, "Going to the next page item, Roman Numeral IX unfairly directing older claimants or insureds to Medicare first so that State Farm paid only excess benefits, although liability was clear and State Farm had first dollar responsibility."

Is that an example of what we did on each of these cases, was to look at the trial transcript?

A Yes, it is.

Q With respect to this case, does that contain [37] his allegation that we just referred to from the trial transcript, allegedly directing older claimants or insureds to Medicare first and, quote, bilking the government out of thousands of dollars?

A Yes.

Q The facts of this case, Mr. Brown, let me represent to you that this is the case where an elderly woman was hit as a pedestrian; is that correct?

A That's correct. I believe she was eighty-six when this occurred.

Q And did she sustain a fracture to her wrist in that accident?

A I believe it was the bone just above her left wrist.

Q All right. And did you review the file in this case?

A Yes, I did.

Q Now, Summers indicates that he was instructed -- And by the way, let me just ask you, in each of these cases Mr. Schultz asked counsel to have Mr. Summers identify who gave him these instructions. Do you recall that in the transcript?

A Yes, I do.

Q Was Mr. Summers correct on more than one occasion as to who he had allegedly received these [38] instructions from?

A I don't recall putting in how many that he was correct on, but I know it was very few.

Q All right. With respect to what he claims he was told in this case, "I was told allegedly not to offer PIP benefits, not to discuss liability, and let Medicare handle the case first." Do you see that?

A Yes.

Q From your review of this file, Mr. Brown, were those allegations true?

A Those allegations were absolutely false.

Q All right. And I want to talk to you about that.

First of all, Mr. Brown, from this file, is there a check -- Let me come to that in a second. I want to show you a document from this file that's entitled "Payment Record." Do you see this?

A Yes.

Q Tell the jury what this document is.

A This is a document that simply outlines the payments that we keep under the no-fault or PIP portions of a policy that would indicate the services and your wages, as well as your medical expenses.

Q Mr. Summers alleged, Mr. Brown, that State Farm, that he was instructed not to offer PIP benefits. [39] What does this document -- And let me ask you, in the handwritten figures on this document, whose handwriting is on those, Mr. Brown?

A That's Ray Summers'.

Q From this document that I've shown to this jury, are the allegations of Mr. Summers with respect to allegedly not offering those benefits true?

A No, those are the payments under PIP benefits that we paid.

Q All right. Mr. Summers then alleges not to discuss liability exposure and let Medicare handle it first. Is there any evidence in the file that Medicare handled these bills first, as opposed to State Farm stepping up and paying?

A No, there's absolutely not.

Q Is there discussions in the file about liability, Mr. Brown?

A There certainly are.

Q And what discussions are there in the file about liability?

A He had indicated in, I think several places in the file, that there was 100 percent liability on our insured.

Q So having found those in the file, when Mr. Summers testified to this jury under oath that he [40] was instructed not to discuss liability, is that true? From his own file?

A That testimony was false.

Q Was it true that Medicaid was told to be handled first?

A I saw no indication of that in the file, no.

Q Do the payment records say that that's not true, as well?

A We were paying medical expenses very quickly, yes.

Q Is there anywhere in the file where there is any instruction to avoid any BI liability?

A No, there is not.

Q In fact -- Well, let me rephrase that. Was there, in fact, payments made, Mr. Brown, that reflect that allegation being true or not true, if you can explain?

A Yes. Again, the coverage code on the left lower side is a 100 payment, and that is a BI liability, bodily injury liability coding. That would indicate a final settlement for bodily injury.

Q In addition, Mr. Brown, I put on the board a document entitled "Release." Does that come from this file?

A Yes, it did.

[41] Q And that document says that there was a payment of $13,047.15. Now, can you tell the jury why there was a difference between the $8,000 on the check that's dated July 10, 1981, and the release that's dated July 10, 1981 for $13,000?

A Yes. The claimant was represented by her son, who is an attorney, I believe in Brigham City, on this, and he had made a final demand of $8,000 plus what the previously paid medical bills were. So the difference were the amount of medical bills that were paid.

Q All right. So is this release proof of the fact that State Farm had been advancing and paying?

MR. HUMPHERYS: Objection, Your Honor, leading.

MR. BELNAP: Let me rephrase it, Your Honor.

Q (BY MR. BELNAP) What is this release proof of?

A Well, it states the total amount that the claimant, Grace Hadfield, was paid on this. And again, the demand was $8,000 in additional cash, in addition to the amount of money that was paid earlier, and it included, I believe, both medical and loss of services.

Q Now, when, in the state of Utah, when you hit a pedestrian, does that pedestrian then become entitled [42] to get benefits under the policy, the no-fault policy of the car that hit them?

A Yes, they do.

Q So in this case, with Mr. Summers having alleged that he was not to offer PIP, not to discuss liability, avoid liability, Mr. Brown, can you tell us if, in his own handwriting, from not only the payment records, but can you tell us whose handwriting is on this release?

A That's Ray Summers'.

Q From his own handwriting, whether or not his allegations were true or false?

A His allegations were not true.

Q Now, in the course of discussions with her attorney, were there negotiations that Mr. Summers was entering into?

A Yes, he was.

Q Does this letter of July 9th, 1981, reflect that there had been an offer of $7,000 and the attorney said, "I want eight"?

A Yes, he wanted eight plus the amount that had already been paid.

Q And is that then reflected in the release that we showed the jury?

A Yes. We accepted his demand there and paid [43] that amount.

Q Now, I want to show you something else, as I conclude this file. Mr. Summers has alleged in other cases, I'll represent to you, and I think you could confirm this from your review, that he was told, and instructed to misrepresent policy limits. Do you remember him saying that?

A Yes.

Q Okay. I want to put up here a memorandum. Can you tell us -- this is September 26th, 1980, from Mr. McGlinn to Mr. Summers -- Mr. McGlinn says, "I'm very concerned over the fact that Mr. Hadfield seems to think our policy limits are $15,000. The letter of 5-8-80 which was received by me on 9-8-80 indicates that you have represented to him that our limits are fifteen. I feel you should clarify this in writing to Mr. Hadfield stating the limits are not fifteen." Have I read that correctly?

A Yes.

Q Have you ever known of a policy, Mr. Brown, at State Farm to instruct employees not, or to instruct employees to misrepresent policy limits?

A State Farm does not have such a policy, and would never have such a policy, no.

Q Does this memo evidence State Farm's policy [44] to tell the truth?

A Absolutely.

Q Mr. Brown, have you noted, as we've gone through some of these files, that a number of them are settling and taking place around the same time as the Campbell matter is pending and being handled?

A Yes, it seems like all of them are about that same age.

Q I want to show you a file entitled Hugie. I don't know if I'm pronouncing that right. I'm also giving you your notes that you prepared when you reviewed this matter with counsel.

Do you recall -- Let me represent to you that this is the case where, unfortunately, a man was on his way home from

having worked the night shift, appeared to have fallen asleep at the wheel, crossed the center line and hit a Logan City garbage truck and was killed.

A Yes.

Q Do you recall that case?

A Yes, the insured was killed in this case.

MR. BELNAP: I'm putting Hugie up on the board.

Q (BY MR. BELNAP) Mr. Summers' allegations, coming from his own document, again, that counsel showed [45] to him, was "Obtaining first contact, or early settlement and release while claimants still under physician's care, with verbal representation that if further complications developed case would be reopened. Then later standing on release and denying further payment for injuries and damages that were unknown at the time but were attributable to the same accident."

Now, with respect to this case, Mr. Summers claims that he was instructed "Not to indicate that the insured fell asleep. Indicate, instead, the insured had a sudden illness. Number two, drag the claim out to the point that Logan City dropped the claim. Number three, represent to the attorney and to Logan City that it was an act of God in that Hugie had an illness that resulted in the accident."

Mr. Brown, can you tell this jury if any of those allegations were true?

A None of those allegations were true.

Q And I want to walk through this with you and take a look at this.

Can you identify what this document is that I'm putting up on the board dated March 12th, 1980, Mr. Brown?

A This would be a portion of the combined liability report that Summers sent to superintendent Tom [46] McGlinn.

Q Does this document come from the file?

A Yes.

Q That Mr. Summers testified about?

A Yes, it does.

Q And does it indicate that, with respect to the facts of the accident, quote, "Apparently the insured went to sleep at the wheel, traveled left of center, and hit the claimant vehicle, a Logan City garbage truck."

A Yes, it does.

Q Mr. Brown, if Mr. Summers had, in fact, been instructed, as he alleged he was, to not mention the fact that this person had apparently gone to sleep, the file reflects the opposite, does it not?

A Exactly.

Q Can you tell us what this document is, Mr. Brown? Is that another page from the same combined liability report of March 12, '80?

A Yes, it is.

Q Does he analyze legal liability?

A Yes, that's part of that paragraph, yes.

Q Who does he indicate is responsible for this accident, Mr. Brown?

A He indicates that our insured is totally [47] responsible for the accident.

Q Now, Mr. Brown, Mr. Summers, in this case, has claimed that you instructed him to change a document just like this in the Campbell case, to change a liability evaluation, allegedly, on his part, to an alleged no liability evaluation. Are you aware of that claim?

A Yes, I am.

Q And in this case, likewise, Mr. Summers claims that he was to indicate, to not indicate the insured fell asleep, and that he had a sudden illness.

A That's what he alleged.

Q Is that what's in the file, Mr. Brown?

A Absolutely not.

Q Can you tell this jury whose handwriting this scene diagram is in?

A That's Ray Summers' diagram.

Q What does this say over on the right-hand side of the diagram?

A It's hard to read, but I think it says, "The insured driver went to sleep at the wheel and traveled left, hitting the claimant head on."

Q Now, does that say, "A/D apparently went to sleep"?

A Yeah, "A/D" would be the insured driver. [48] That's the way Ray put that.

Q And that's in his own handwriting?

A Yes, it is.

Q Now, putting the allegations back up here, Mr. Brown, he's alleging that this is also a case of first, or early contact settlement to essentially take advantage of the claimants while they're still under physician's care. Do you see that?

A Yes.

Q I want to put another document up on the overhead and ask you if this is from Mr. McGlinn to Mr. Summers, March 12, or March 10, 1980?

A Yes, that's the document.

Q "Due to the severity of the property damage loss, I would caution you to make no settlement until we know our complete exposure on all parties at loss. Also, since we have Workmen's Compensation involved, you will be using coverage A-103 to reimburse worker's compensation carrier."

Now, what does that memo say about whether or not a first contact settlement is being used in this case?

A Well, it would indicate that there is not a first contact settlement, that the claimant is going to their own worker's compensation carrier, which was the [49] law in Colorado -- or

I'm sorry, I'm from Colorado, it's the law in Utah at that time -- and that we have a, really we're going to be making a payment back to the work comp carrier under our liability coverage, which is A-103, when they make the claim against us.

Q And does the memo, in fact, specifically say, "I would caution you to make no settlement until we know our complete exposure on all parties"?

A Yes, that would mean you'd want to wait and get all the information on the injuries and all that.

Q Given Mr. Summers' allegations, Mr. Brown, was this a first contact settlement?

A With the injured parties there was no first contact settlement, no. There was no direct settlement with it.

Q Looking at what he claims he was instructed to do, are his allegations to this jury true?

A None of those allegations are true.

Q Now, from reviewing this file, did Mr. McGlinn ask Mr. Summers to see if there was a postmortem report, to assure that there wasn't another cause of death that had caused the accident?

A Yes, he felt that that would be proper investigation.

Q All right. And did Mr. Summers follow up on [50] that?

A To my memory, yes, he did.

Q And did he indicate that Dr. Church, from Ogden, had indicated massive head injuries as being the cause of death?

A Yes, that's in his handwriting down at the bottom, there.

Q Ultimately, Mr. Brown, and I want to ask you if this is contrary to Mr. Summers' statement, "To drag out the claim to the point that Logan City dropped the claim." Do you see that?

A Yes.

Q Whose handwriting is this release in, Mr. Brown?

A The release was prepared by Ray Summers.

Q And what does it reflect with respect to the payment to Logan City Corporation?

A That there was over $9,000 paid to them.

Q What was that for, Mr. Brown?

A The $9,000 was for damage to their vehicle.

Q Did Logan City drop the claim in this case, Mr. Brown?

A No, they were paid over $9,000.

Q The date of this release is March 11, 1980?

A Yes.

[51] Q Now, another point, Mr. Brown, is, Mr. Summers claimed, did he not, that he was instructed to drag the claim out. Do you see that?

A Yes.

Q Does this release reflect the date of the accident?

A Yes, the 27th of February, 1980.

Q And the date of the settlement?

A It looks like about twelve days later.

Q Mr. Brown, would you characterize that as dragging out a claim?

A Not when you're talking about that much damage. That's pretty quick payment.

Q Given this clear -- Well, let me strike that. Given this evidence that we've shown to the jury, can you tell this jury whether or not any of the allegations of Mr. Summers were true?

A None of the allegations were correct, no.

Q Now, in this case, in addition, were survivor benefits, funeral expense, et cetera, paid to the family of the man who was killed in this accident?

A I believe that they were, but I don't have it in my notes. Do you want me to check the file?

Q Please. What is B coverage, Mr. Brown?

A B coverage is property damage liability.

[52] Q And did State Farm pay their limits under B coverage in this case?

A Yes, we paid the $9,000-plus to the city, to Logan City, and then there was another vehicle that was parked, unoccupied, that was also struck, and paid the rest on that.

Q Mr. Brown, I want to show you a memo, March 27, 1980, after the property damage had already been paid, correct?

A Yes.

Q Does this memo go on to reflect, with respect to the employees that were in the garbage truck, that State Farm would remain responsible for those payments?

A Yes, it indicates that the, apparently the City of Logan or their worker's compensation carrier would be probably coming back against State Farm.

Q I'm going to next move to the Tew, T-E-W, case. I want to hand you the original file in this case and your notes prepared in your meeting with counsel reviewing the various items that we've talked about in previous foundational questions, Mr. Brown.

On this Tew case, Mr. Summers' allegation was, "Forcing claimants and insureds to litigate, threaten to litigate, or complain to insurance commission before paying claims or disclosing [53] information, where liability is clear."

And I'll represent to you, Mr. Brown, that this was a case involving a Mr. Tew, who was traveling up through the Dry Lakes area, and was hit by another vehicle; is that correct?

A Yes.

Q Mr. Summers claims that he was instructed "To deprive the insured of any benefit under his own policy, and instruct insured to seek recovery from the operator of the other vehicle." Do you recall that claim being made by Mr. Summers under oath?

A Yes, I do.

Q Mr. Brown, I want to put up on the overhead a check in the amount of $8,807, and over here in the left-hand corner, can you tell the jury what these codes mean with respect to benefits that are being paid?

A Yes, that was paid on the 18th of '81 for date of loss of 11-25-81. The codes, the 400-2 payment on top for $1,838, that's a partial payment under the collision portion of the policy.

The 051-2 is, and the number 2 -- I'm sorry, number 2 means it's not a final payment, there's still going to be more payments coming on it. The 051 is the medical benefits, the 052 are lost wage benefits, the 054 are lost services benefits, I believe that's an 053,[54] which would be a death benefit, funeral benefit, and then the 056 is a death benefit.

Q Now, with respect to the fact that the accident is in November, and these payments -- Is the accident date listed right here, Mr. Brown, 11-25?

A Yes.

Q These payments are being made approximately three weeks or so thereafter; is that right?

A Yes, it looks about three weeks later.

Q And then you've indicated to the jury that the coding on this check indicates that on many of these categories these are not final payments.

A No, only the death benefits and the funeral benefits are final under that coverage.

Q Given Mr. Summers' allegations, Mr. Brown, that he was instructed to deprive the insured of any benefit under his own policy, is that true, Mr. Brown?

A That statement is not true.

Q Can you tell me whose handwriting is on this check?

A That's Ray's handwriting.

Q Who signed the check, Mr. Brown?

A Ray Summers.

Q Whose handwriting is on the loss of, or excuse me, on the payment record that I've put up on the [55] board?

A That's Ray Summers'.

Q Whose handwriting is on this payment record for Paula Tew?

A Ray Summers. There's one additional one down there that's not Ray Summers, and I think the last one on the right side. But I think the rest of them were.

Q Does this, Paula Tew, indicate that payments are starting in December of 1981 and continuing for medicals, and also for loss of income or services starting right after the accident?

A Yes, they are. The last one on the left also was not Ray Summers' writing on that. I believe that was Wayne Ballantyne. That was done after Mr. Summers was no longer with us.

Q Now, Mr. Brown, is there any indication in this case that the Tew family was deprived of benefits, as Mr. Summers testified under oath?

MR. HUMPHERYS: Your Honor, I object. That misrepresents Mr. Summers' testimony. He said that he eventually paid them, but it was because he was fighting to get them paid with resistance from State Farm, and that is an incorrect representation.

MR. BELNAP: Okay, let's find out, counsel.

Q (BY MR. BELNAP) Mr. Brown, is there any [56] indication in the file that there was any fighting going on with State Farm between the date of this accident and December 18th, when payments were, in fact, delivered by a check?

A There absolutely were not. The insured was represented by attorney Jorgensen of the Olsen, Hoggan and Sorenson firm out of Logan, and that representation was only a very few days after the accident, I think. Three or four days after the accident.

Q Let me read you, Mr. Brown, from the transcript. Mr. Summers' testimony, page 247 and 248. "I believe he's now Utah tax commissioner, but Mr. Tew was deprived of any benefit, told to seek his recovery from the vehicle coverages on the vehicle that was involved, because they were primary and responsible." Is that true?

MR. HUMPHERYS: Hold on, you need to read down below, Paul, where he said he finally got the payments approved and paid him. That's a misrepresentation, and you know it.

MR. BELNAP: Counsel, you're misrepresenting, and you know it, and you've got cross exam --

THE COURT: Direct your examination and argument to the court, counsel, I instruct both of you.

MR. HUMPHERYS: All right, Your Honor we [57] would object because he has taken out of context a specific portion of what Mr. Summers said, and I object to that because he testified that later through his efforts he was able to get Mr. Tew paid. And so he's taking that out of context and misrepresenting it.

MR. BELNAP: Your Honor, I'd move to strike that. If he wants to establish that on cross, go ahead.

THE COURT: Well, I'm going to overrule the objection. I'll allow you to proceed with your question, and then rebut in cross.

MR. BELNAP: Thank you.

Q (BY MR. BELNAP) Is this a payment record for Roger Tew?

A Yes, it is.

Q Whose handwriting are the medical expenses noted in?

A That's in Ray Summers'.

Q Whose handwriting are the loss of income or services in?

A All except the last one on that column is Ray Summers'.

Q And the same with respect to one of the other children, same answers?

A Yes, those are in Ray Summers' handwriting.

Q And was this child apparently, was this [58] medical, or for a death benefit?

A That would indicate medical, and he paid the $2,000 total, the total limit we had under medical was $2,000.

Q Now, it's been claimed that these people were deprived of benefits. I'm putting up on the board a memo dated December 21, 1980. Who is that from, and who is it to?

A It's from the assistant superintendent in the Ogden office at that time, Bud Rhodes to Ray Summers.

Q And what does it indicate, Mr. Brown?

A He indicates that he had talked to Ray Summers and extended $10,000 in no-fault or PIP authority.

Q I'll represent to you that Mr. Summers claimed under oath that he was instructed to do these things by Tom McGlinn. Who is being referenced in this memo as the superintendent at State Farm?

A Well, in this memo --

Q Right here when it says, "Bob's absence"?

A The superintendent actually would be Bob Noxon, yes.

Q Was it Mr. McGlinn, as he represented to this jury?

A No, it was not Mr. McGlinn.

[59] Q Is there any indication in this file that there was fighting, or an attempt to deprive the insured of benefits under the policy?

A Absolutely not.

Q Was there a discussion during the handling of this case, after State Farm had expended payments, whether or not they would be subrogated to those payments from the recovery that the Tews were going to make against the other vehicle?

A Yes, they were. And I might clear it up a little, that's kind of long. But if you make payments in Utah, under the no-fault law you have a right to go against the party at fault to recover back your payments on that. Yes, there were discussions on that.

Q And Mr. Brown, the Tew family was making a claim against the car that hit them; is that right?

A Yes, they were making the liability claim against that company.

Q And under the law, State Farm had a right to be reimbursed for all of the medical expenses they'd paid out, and other benefits, which totaled $25,000; is that right?

A Yes.

Q Okay. Or totaled twenty-something thousand. Go ahead and review your file, if you need to.

[60] A I believe there was a total of $50,000 on this particular one.

Q All right. Did State Farm ultimately waive and say, "We won't seek any reimbursement from the other carrier so that more money would be put in the Tews' pockets"?

A Yes, that's correct.

Q To the tune of how much, Mr. Brown?

A Well, you mean the total amount of medical?

Q How much did State Farm waive that they had a right to claim recovery back on?

A I don't have that in my notes, but I can look in the file, here. I could just shortcut it and say several thousand dollars.

Q Why don't you go ahead and take the time to find it.

THE COURT: We're getting close to a break.

* * *

[61] * * *

Q (BY MR. BELNAP) Mr. Brown, during the break were you able to identify a document from the Tew file which indicated in total how much State Farm had paid the Tew family? I think I had mentioned something in the range of twenty or $25,000. Can you tell us what the document reflects were the total payments?

A The document here was a subrogation letter against the other insurance company, and it was $17,625.50.

Q Okay. And when you say a subrogation letter, was that a letter that was sent to the insurance company for the driver of the vehicle that ran into the Tew car?

[62] A Yes, it was.

Q And that driver that hit the Tews had $50,000 worth of coverage; is that correct?

A Yes, he did.

Q And State Farm had paid about $17,000, and was telling that other insurance company, "We want to get our payments back." Is that right?

A That's a notice of how much we had paid, and it's to let them know how much we had paid so we possibly could do that, yes.

Q Now, if State Farm were to get those payments back that they're entitled to, would that, then, have reduced the policy limit of $50,000?

A Had they paid us that amount, yes, it would have.

Q Did State Farm end up waiving that so that the Tews could get the full amount of that policy?

A Yes, they did.

Q I next want to go to a file by the name of Muggler. And I want to show you your notes, and ask you if this is the original file materials that you reviewed?

A Yes, that's the master file. It's both the master and the field file.

Q I'm putting up on the board the Muggler [63] allegations of Mr. Summers. "Encouraged the claimant to bring an unwarranted malpractice action against a treating physician in an attempt to avoid financial responsibility."

Facts of case, the insured had a motorcycle accident with another person by the last name of Huppi, or Huppi, and that this Huppi on the motorcycle sustained an injury to his knee and had a scar on that knee. Do you remember that accident?

A Yes, our insured pulled out in front of a stop sign, in front of a motorcyclist.

Q Mr. Summers said he was instructed that he was to tell Mr. Huppi to bring a claim against the treating physician in an attempt to avoid financial responsibilities. Do you recall that allegation on the part of Mr. Summers?

A Yes, I recall that allegation.

Q First of all, Mr. Brown, did State Farm enter into a settlement with this young man?

A Yes.

Q And was that for the amount of 33,000 and some-odd dollars?

A It was 30,300 and some-odd dollars.

Q In the course of reviewing the file, does it indicate that Mr. Huppi was not only -- Well, let me [64] rephrase it. Did it indicate that he was consulting with his parents and also with an attorney?

A I recall that he was consulting with his parents throughout this, and I think, at least there was an indication

that he was consulting with an attorney. I can't remember exactly on that.

Q All right, we can find that if it's necessary. When he signed this release, was he over the age of eighteen?

A Yes, he was.

Q And is it witnessed by his mother, as well?

A I believe that was his mother, yes.

Q Did you see anywhere in this file, Mr. Brown, where there were any instructions to Mr. Huppi to allegedly file a malpractice action so it would reduce the responsibility of State Farm?

A Absolutely not.

Q Was there a reference that Mr. Summers made to whether or not Mr. Huppi ought to consider getting a second opinion from another doctor?

A Yes, I believe he made several references to that.

Q Was that in his own handwriting?

A Yes.

Q Was there any instruction in the file from [65] anybody supervising him that he should allegedly go out and tell the Huppis to file a malpractice action to reduce their liability?

A There were not.

Q On this particular file, Mr. Brown, had State Farm, in addition to making the payment that's reflected in the release, advanced money to this family during the process, before a final settlement was made?

A Yes, we did.

Q Is that referred to in this document, that there were expense advances being made?

A Yes.

Q Whose handwriting is this, Mr. Brown?

A That's Ray Summers'.

Q And whose initials are on here?

A That's Bob Noxon.

Q In meeting with claimant, C. L. Huppi, dated November, or October 31, 1981, quote, "In meeting with claimant Huppi, settlement discussed. He will think over offer and advise after he reviews with attorney/family, who has been advising since inception of file." Have I read that correctly?

A Yes.

Q I want to put up on here a memo. Did this come from the file, from Mr. McGlinn to Mr. Summers?

[66] A Yes.

Q 11-27-79. It's been alleged in this case that State Farm, among other things, tries to take advantage of people by settling on a first contact, or an early basis. Are you aware of those claims?

A Yes.

Q "As we discussed, because of the severe injuries involved with this young man, and the fact that he is not yet healed, as well as the fact that court approval may be involved because of the extensive nature of the injuries, I would suggest that we not enter into negotiations for settlement at this time. If the claimant's parents wish to provide us with a demand, we'll be happy to receive that. However, I do not think it would be fair for the child or the parents or State Farm to enter into settlement negotiations until we are exactly aware of the potential medical problems this young man may encounter."

Mr. Brown, as a claims person, can you tell the jury whether or not that -- Was that memo in the file?

A Yes, it was.

Q Does that indicate to you that State Farm was attempting to take advantage of this family, or is waiting for the injuries to complete their healing [67] process?

A It states that we prefer in this case to wait for the healing to continue until, I think at least the boy, or the parents, or everybody knew exactly what was going to happen in the future.

Q Now, the release in this case was executed, this document we had up on the board, was the end of '79, and this was executed two years later, in '81. Was Mr. Huppi at that time over the age of eighteen?

A Yes, he was.

Q And even though the accident may have happened when Mr. Huppi was under eighteen, if he is over eighteen, is he then allowed to sign a release?

A Yes, he can contract at any time after he reaches eighteen.

Q Now, Mr. Brown, Mr. Summers alleged that he was instructed to tell them to file a malpractice action so State Farm could get out of this case. I want to put this memo up that's dated November 7th, 1979. Whose handwriting is that in?

A That's Ray Summers'.

Q He indicates, "The joint has never healed and continues to weep a sera and a somewhat purulent discharge, which appears to be as a result of infection, which, as I expressed concern to the claimant that he [68] should see a doctor to have the problem evaluated, could cause the loss of the leg. I suggest the payment of the requested $15,000 in policy limits, to absolve further exposure."

Now, is there any mention in there that he had received instructions to file a malpractice action?

A No, there's not.

Q And is he requesting authority in this memo?

A He's requesting $15,000, if it was the policy limits, to resolve it.

Q And in response to this memo that's dated November, 1979, is that when Mr. McGlinn says to him, "I do not think it would be fair for the child or the parents, or State Farm, to enter into settlement negotiations until we are exactly aware of the potential medical problems this young man may encounter"?

A Yes.

Q Can you tell us whether or not, from your review of this file, you believe that decision process was fair to the claimant?

A The decision to hold off on settlement until he found out about it?

Q Yes.

A I think that that's our obligation to do that.

[69] Q Does Mr. Summers talk about the fact that the claimant was being treated by a general doctor, a general practitioner, rather than an orthopedic surgeon?

A Yes, he mentioned that in the file.

Q Did Mr. Summers suggest that an evaluation be obtained from an orthopedic surgeon?

MR. HUMPHERYS: Your Honor, I think we're leading in an area which is sensitive.

MR. BELNAP: I'd be happy to rephrase it.

MR. HUMPHERYS: I think it needs to be.

Q (BY MR. BELNAP) Was there any suggestion in the file, by Mr. Summers or anyone else, that perhaps an evaluation from an orthopedic surgeon should take place?

A Yes, there was.

Q And is an orthopedic surgeon a doctor that has specialized training in joints and injuries to the bones and joints?

A Yes, they are.

Q Mr. Brown, given Mr. Summers' allegations in this Muggler case, can you tell the jury whether or not his allegations that he claimed to this jury under oath were true?

A His allegation was not true.

Q I next want to move to the Winn-Hansen case. I want to hand you the original file and ask you if this [70] is the file that you reviewed, along with your notes that you prepared in conjunction with that. Is it?

A Yes, this is the Winn and Hansen case.

Q Mr. Brown, this is an allegation by Mr. Summers of an example of hiding or influencing insured to hide physical evidence, a truck that had been negligently maintained. Do you recall a situation where a State Farm insured vehicle had been involved in an accident, and there was some question whether or not there had been some mechanical failure on that truck?

A Yes, I do.

Q In terms of Mr. Summers' instructions that he claims, did you review the trial transcript?

A Yes, I did.

Q And he claims he was instructed not to put photographs of the vehicle in the file?

A That's one allegation, yes.

Q Mr. Brown, I want to show you what I'm putting up on the screen, and ask you if there's a reference of a claim number up at the top of this overlay, with pictures and photographs of the truck.

A Yes.

Q And is that the same claim number as this case that we're dealing with?

A Yes, it is.

[71] Q Where were these photographs when you opened the file, Mr. Brown?

A They were filed in the file.

Q Whose handwriting is on that document?

A That's from Arch Geddes, who was one of the claim reps up in the Logan office when Ray was there.

Q And did Mr. Geddes go down and inspect this truck?

A Yes, he indicated in his memo to Ray, there, that he checked out the truck and looked at the mechanical side of it.

Q Now, Mr. Brown, Mr. Summers went on to claim that the insured sold the vehicle, and the superintendent said, "Good, any problems that evolve they'll have difficulty tracing." Was this document in the file when you opened it up, along with the photographs?

A Yes, it was.

Q Does it reflect that there may be some difficulty proving that the, that our insured was not guilty of negligent maintenance?

A Yes.

Q If you were trying to hide something, Mr. Brown, would you leave something like this in the file?

[72] A No, you wouldn't.

Q Have you ever done that, Mr. Brown?

A No, sir, I never have done that. And never would.

Q Will you tell us what this document is, Mr. Brown? It's dated September 12, 1979.

A That would be paragraph number 5 of the combined liability report.

Q Does it indicate in this document that, "The initial impression of mechanical failure latent defect is questionable, due to the fact that a joint inspection of the described vehicle reveals there is very poor maintenance of this vehicle. Because of poor maintenance, the condition of negligence prevails, creating a hazard that resulted in the mechanical failure, and the resulting accident therefrom. The latent mechanical defect is a mitigating circumstance, and will be employed in any discussion of legal liability responsibility."

Now, Mr. Brown, having looked at that memo, is State Farm indicating that there's a problem with negligent maintenance on the truck?

A There's certainly an indication that there's a possibility of negligence due to negligent maintenance, yes.

[73] Q Does it also indicate -- Well, does it indicate that there may be evidence of a mechanical defect that may have contributed to the accident, and that those two must be weighed in discussions?

A Yes.

Q Do you see any problem with that?

A No, you should weigh out all the possible portions of negligence any time you're evaluating a file.

Q In this CLR, we were looking at page 3. Now looking at page 7, September 12, 1979, "Followup investigation and inspection of the described vehicle certainly affirms that the insured Winn vehicle had been poorly maintained as far as mechanical conditions are concerned. Please note and refer to the comments of photograph information on the inspection of the described vehicle by estimator Geddes."

Are those the photographs that Mr. Summers claims were taken out of the file?

A Yes.

Q And this document was also in the file; is that right?

A Yes, it was. Or is.

Q Ultimately, was this case resolved? If you need to check the file, go ahead, Mr. Brown.

[74] A I can't answer your question on there. The file, this is the field file, is the only thing that we could find, and it was referred to Provo claim office back in 19, I think '81 or '82.

Q Was there any evidence, Mr. Brown -- And let me ask this first as a foundational matter. Did the other parties have counsel in this case?

A Yes, they did.

Q All right. Was there evidence to support Mr. Summers' allegations that the vehicle had been sold or secreted away, or gotten rid of, whatever you want to say, so that there wouldn't be evidence?

A There's nothing like that in the file, no.

Q Based upon Mr. Summers' allegations, and what is in his own file, is what he told this jury true or not true, Mr. Brown?

A His statements are not true.

Q I'm going to move to a file entitled Lowe. I'm going to hand you the original file, and your notes, and ask you the same question I've asked you on the other ones. Is this a file you've reviewed?

A Yes, it is.

Q And are those the notes that you prepared in connection with working with me on the review of the file?

[75] A Yes, they are.

Q I'm putting up the Lowe summary. The allegation of Mr. Summers was unjustly attacking the character, reputation, and credibility of a claimant, and making notations to that effect in the claim file, to create prejudice in the event the claim ever came before a jury.

Mr. Brown, the facts of this case, there was an accident involving a person by the name of Sears; is that right?

A Yes, Sally Sears.

Q And did you review the file?

A Yes, I did.

Q Did you note that Ms. Sears was living with another person at the time of the accident, who went by a different name?

A Mr. Summers indicated that in one of his memos, yes.

Q Okay. And was it determined whether or not those people were married?

A Yes, they were married.

Q Was there anything in the file that you would characterize as unjustly attacking the character, reputation of a person so that that could be presented to a jury?

[76] A No.

MR. HUMPHERYS: Your Honor, let me object to his answer regarding whether or not they were married, based on lack of foundation. I don't think there's a foundation whether this witness knows they were married.

MR. BELNAP: Let me ask him this for foundation.

Q (BY MR. BELNAP) Does the file reflect at a later time that it was determined they were married?

A Yes, it does.

Q Okay. Now, Mr. Brown, before those statements in the file, or at the time of those statements about there being different names, was authority put on this file for the policy limits of the policy?

A We had put total policy limits authority on the file, yes.

Q Was there any attempt at all, that you could see in the file, to reflect a decision to put authority for policy limits in the case, based upon the fact that somebody had a different last name than a person they were living with?

A There was no indication that the fact that the people with two different names living there had anything to do with the file.

[77] Q Did State Farm advance expenses on this case?

A Yes, they did. We did.

Q Before -- And was that done without requiring a release?

A Certainly, yes.

Q Did Mr. McGlinn, Mr. Summers' superintendent, provide Mr. Summers with this memo that I'm putting up on the overhead, dated April 29th, 1981, asking that the case be moved towards settlement as soon as possible?

A Yes.

Q And offering the total limits of the policy?

A Yes, indicating a $15,000 evaluation.

Q From your review of the file, did there come a point in time where Mr. McGlinn had to remind Mr. Summers that the total policy limit had been authorized on this file, and that he should get it offered and pay it?

A Either Mr. McGlinn or Mr. Noxon did that, yes.

Q All right. And these limits had been authorized a month earlier by Mr. McGlinn in March of '81, had they not?

A Yes, he's extending authority there of $15,000.

Q Ultimately did Mr. Summers follow the [78] direction of the superintendent and get this case settled?

A Yes, the case was settled for the policy limits of $15,000.

Q Now, given Mr. Summers' allegations that he was instructed to attack the character, reputation, and credibility of an unmarried claimant cohabiting with a business partner, was there any evidence in the file that you could point to that that was true, in terms of handling of this file and getting it settled, Mr. Brown?

A I did not see any evidence that that would be the true statement.

Q I want to go back to the Gittens case that I asked you about this morning, and ask you if there was -- if I can stand next to you, while I'm talking about this -- was there a release in this case?

A Yes, there is a release in the case.

Q Okay. Does this release provide that there's not being a release for any benefit -- It's hard to read, "That will be received in the future on payments for medical"?

A Yes, it left the medical open for the other insurance company to come back against State Farm.

Q Okay. I'm going to move to another area, Mr. Brown. Mr. Brown, I want to move to the Campbell [79] file. What is this document?

A This is a bodily injury preliminary report that was prepared by Ray Summers on the Campbell file.

Q And the jury's seen it before, it indicates the date of the accident, does it not?

A Yes.

Q And goes on to describe the facts of the accident?

A Yes, it does.

Q Talking about, "Passed a line of several vehicles also northbound, apparently had to cut into the lane of traffic due to the approaching southbound claimant vehicle, which vehicle, because of the hazard, pulled to the right, hill a shoulder, lost control," et cetera.

A Yes.

Q Mr. Brown, Mr. Summers claims that after preparing this BI preliminary report, he then prepared a combined liability report that's known as a CLR. And I'll represent to you that he claims that after this report was prepared that he received a telephone call from you directly, instructing him to take this report, take pages out of it, make changes to it, that you specifically instructed him to do, changing his evaluation from one of liability to no liability. Are [80] you aware of the allegations that he's made in that regard?

A Yes, I am.

Q Mr. Brown, are those allegations true?

A I have never instructed a claim rep that worked for me or anyone else to ever change a file or take anything out of a file, no. The opposite is the facts. You need all of the facts in the file.

Q I want to ask you some questions, Mr. Brown, about that. Your office at the time was in Salt Lake City; is that correct?

A Yes, it is.

Q Where was Mr. Summers located at the time?

A Mr. Summers was a claim rep in the Logan office.

Q Were you Mr. Summers' immediate supervisor?

A No, I was not. His supervisor.

Q At this time were you a divisional claim superintendent?

A Yes, I was.

Q How long had you been a divisional claims superintendent?

A Since April the 1st of 1979.

Q So in 1981 you were in Salt Lake City as a divisional claim superintendent, Mr. Summers was in [81] Logan.

A Yes.

Q Where was his supervisor located in 1981, May?

A His superintendent was in the Ogden office.

Q Did you supervise his superintendent?

A Yes, I did.

Q Who was that?

A Bob Noxon.

Q Mr. Brown, can you tell the jury if there was a practice on your part to pick up the telephone, go past a person's supervisor, and go directly to a claim representative and give them instructions on a particular file?

A I would never do that as a divisional claim superintendent.

Q Can you tell the jury whether or not, in 1981, you received combined liability reports in Salt Lake that were prepared in the various offices throughout the state of Utah?

A No, I did not.

Q Where did the combined liability reports go, say, for instance, if one is prepared in Logan, which office would they go to?

A Ray would be reporting directly to Bob Noxon. [82] So it would go from Ray to Bob.

Q And would you receive a copy of that combined liability report?

A No, I would not.

Q Mr. Brown, Mr. Summers specifically claims that you called him after he prepared this report --

MR. BELNAP: And counsel, I think we've indicated this, but it's correct that it's been agreed that material in this blank spot has been removed by agreement of the parties; is that correct?

MR. HUMPHERYS: That's correct.

Q (BY MR. BELNAP) -- that Mr. Summers claims that you called him and told him to change specifically what he had written on page 5 in this area, about the description of the accident. Did that happen, Mr. Brown?

A That did not happen.

Q He also claims that you instructed him specifically to change paragraph 16 under "Analysis and Evaluation." Did that happen, Mr. Brown?

A I never discussed this case with Ray Summers at that point, no.

Q When it's stated here that, "An analysis of legal liability involved reveals that there is questionable negligence imputable to our insured," did [83] you instruct Mr. Summers to make that statement?

A I never discussed this case with Ray Summers at that point, no.

Q Mr. Brown, if you believe Mr. Summers, that State Farm was on an effort to change this file from an evaluation he made of alleged liability to one of no liability, would this document have been left in the file, if someone had that practice?

A State Farm does not ask anybody to change any document. But he indicates there that there was a possibility of some negligence on Mr. Campbell.

Q Is there also a discussion on the page that he claims that you ordered him to change, that talks about some adverse facts that could be adverse to Campbell in terms of the situation that was occurring?

A You could certainly take that from his facts.

Q And the document I referred you to, that was in the file is the BIPR report; is that right?

A Yes, it is.

Q Mr. Brown, Mr. Summers alleges that after you called him, you called Mr. Noxon and told him what you had ordered Mr. Summers to do, prompting an alleged call from Mr. Noxon to Mr. Summers to retrieve a memo back out of that file. Did that call ever take place?

A I never talked to Mr. Noxon or Mr. Summers, [84] either one.

Q About this file?

A On this -- No, that's -- No.

Q Mr. Brown, Mr. Summers claims that you and Mr. Noxon traveled, you from Salt Lake, he from Ogden, went to the Logan office while he was off work, went into his desk, which was right next to his co-employees, went through that desk, and took a Pendaflex file that had copies of these changed pages that he alleges took place. Did that happen, Mr. Brown?

A That did not happen.

Q I want to go to another area, Mr. Brown. There's been some discussion in this case about average paid costs, about reducing indemnity expenses on PP&Rs. We have supplied the plaintiffs in this case with your PP&Rs, your personal PP&Rs back into the early eighties, and up through into the nineties. Do your PP&Rs have mention in them about attempting to control indemnity expense, along with other costs and expense?

A Yes, they do.

Q Why?

A Well, in the -- It's kind of hard to explain. When you're looking at your operation that I was in charge of the Utah automobile insurance operation for claims, you have to try to figure out what's [85] happening in that operation. And so to look at your average paid cost, you're trying to forecast what's going to happen the next year, and a lot of times you take the information that you had in the prior years to forecast what's going to happen next year. And it's really just an awareness thing, so you can try to understand what's happening within your operation.

Q Mr. Brown, did there come a point in time when instructions were received for claims management -- Is that what you've been?

A Yes.

Q Is claims management? That those goals should not, no longer be used. Do you recall that?

A Yes, I believe that was in 1994, I believe.

Q All right. Between the times that we've supplied these documents in the eighties up through the nineties, was there ever a time that you required of claim representatives that they should reduce the payments on any particular file as a result of goals that you had on your PP&R?

A Absolutely not. You evaluate every single claim based on its own merits. And claim reps didn't even have these figures for their own, I guess, claims that they handled. They weren't even available. They weren't even in the computer.

[86] Q Can a particular claim rep, could you, I should say, measure and track a particular claim rep's average paid costs?

A Not unless I copied down every single payment that they made over a period of a year, and we don't have the time to do that.

Q Where is that able to be measured within the accounting that State Farm does? Is it on an entire unit basis?

A On the average paid claims?

Q Yes.

A It would be, the lowest level would be at a claim unit.

Q And not at the claim rep level?

A No.

Q Mr. Brown, I realize that -- I'm not trying to be silly about this -- that we acknowledge everybody in this room's a human, obviously. Do you claim that you've never made a mistake in your life in handling claims?

A No, certainly not.

Q How have you been trained, Mr. Brown, in terms of how you should handle claims at State Farm? In terms of the philosophy?

A Well, I started a little over thirty-one [87] years ago, and when I first started with this company, the philosophy is the same as it is right now. And that's to handle each claim on its own merits, pay what you owe, and as soon as reasonably possible, and protect the insured by getting a release on the claim.

* * *

[89] * * *

Q Now, it's claimed in this case that there is a document known as the Excess Liability Handbook that does have provisions that evaluations should be given, but not in writing if policy limits may be involved. I want to ask you, Mr. Brown, have you ever used that book in the time that you've been with the company?

A I have never used that handbook, no.

Q Samantha Bird claims that you gave her a copy of that, Mr. Brown, in the early 1980s. Is that true?

A No, she was mistaken on that.

Q You've not seen -- Well, let me rephrase it. Can you tell the jury if you've seen that book, other than in the context of this litigation?

A I've only seen it for this trial.

Q With respect to first-party settlements, there's been some discussion with the jury, and I don't want to belabor this, but in a no-fault state, Mr. Brown, are you currently working in a no-fault state in Colorado?

A Yes.

Q In a no-fault state, are first contact settlements in bodily injury cases something that you encourage and promote?

A First contact settlements in a no-fault [90] state, you really don't have an opportunity to even have. It's --

In Colorado, as an example, there's a $2,500 medical threshold, or serious injury threshold before a person can make a claim for general damages. And it usually takes, maybe several weeks, sometimes several months, for a person to accumulate that many medicals. So you just don't have an opportunity for a first call settlement.

Q Mr. Brown, you were the divisional claim superintendent when the Campbell case was tried; is that correct?

A Yes, that's correct.

Q Did you become aware that the jury returned a verdict in excess of the policy limit?

A Yes.

Q And did you become aware that after that verdict was entered, that judgments were entered against Mr. Campbell in the latter part of November of 1983, and an amended judgment in favor of Mr. Ospital's heirs, the first week of December of 1983?

A Yes.

Q Was a bond issued when Mr. Bennett was directed to file an appeal?

A No, there was not.

[91] Q And do you have an understanding one way or the other, Mr. Brown, that, whether or not the parties entered into an agreement as to whether or not a bond would be necessary? That just calls for a yes-or-no answer.

A Yes.

Q What is your understanding?

A It's my understanding that the parties did have an agreement that a bond would not have to be entered.

MR. HUMPHERYS: Which parties are we talking about that a bond doesn't need to be entered? Maybe I missed that. May I inquire of that for lack of foundation objection, Your Honor? Motion to strike.

MR. BELNAP: It seems like that's a point that he wants to go into on cross.

THE COURT: Sustained. I'm not -- Follow that up and get some information from him on what his knowledge is of what he's talking about.

MR. HUMPHERYS: So the objection is sustained?

THE COURT: It was sustained.

* * *

Q (BY MR. BELNAP) Mr. Brown, did you become aware whether or not correspondence went back and forth [92] between counsel for the plaintiff in this case and Strong and Hanni concerning whether or not a bond would be necessary?

A Yes.

Q Have you seen that correspondence?

A Yes, I have.

Q And does that correspondence, as you've reviewed it and understood it, indicate whether or not a bond would be necessary?

A To me I understand that to mean that bond would not be necessary.

* * *

[93] * * *

CROSS EXAMINATION BY MR. HUMPHERYS:

Q All right, Mr. Brown, before we review these files that Ray Summers adjusted that you've just gone through, one last night and a few this morning, I'm [94] going to give you one last chance to change your testimony before we go through them.

Is it your testimony, Mr. Brown, that State Farm treated all of their insureds in those files fairly?

A Yes, it is.

Q And at no time did State Farm take any advantage of any insured in that file. Is that your testimony?

A I don't recall in any of the files that I looked at where there was any attempt at all to take advantage of anyone.

Q And State Farm always paid fair value in all of those files; that's your testimony, too, isn't it?

A My review of the files would indicate that, certainly, that a fair value was paid.

Q All right. Then you have had your chance. Let me lay some preliminary questions. When did you start looking at these files?

A A week or so ago.

Q All right. And did you know that copies of those were not produced to us until this last Monday, a few days ago?

MR. BELNAP: Your Honor, there was no identification of these files until Mr. Summers [95] testified to them, and

we immediately started working on locating those out of all the group of files. And I think to imply otherwise, counsel knows the facts.

Q (BY MR. HUMPHERYS) I'm not suggesting you should have produced them prior to, but my point is this. We have not had an opportunity to go through them as thoroughly, perhaps, as we would like to, and depose you on them; isn't that correct?

A I don't know if you've had that opportunity or not. That's --

Q But we haven't deposed you on any of these, have we?

A No, you haven't.

Q And to your knowledge, Mr. Summers has not been part of this review, since you've had the files, correct?

A I don't know if Ray Summers has seen the files or not.

Q All right. Now, these files that you've been looking at have been in either your possession or Strong and Hanni's possession since 1980, in that time period; is that correct?

A I don't have any idea as to the exact date that those came into Strong and Hanni's possession.

Q All right. But they've always been in either [96] State Farm or Strong and Hanni's possession. That's correct, isn't it?

A Again, I don't know the answer to your question. I would assume that that would be correct, but I really don't know.

Q Now, just another little foundation question. You mentioned that as a divisional, you didn't communicate with Ray Summers as a regional representative on a regular basis, did you?

A I didn't communicate -- I didn't communicate with him on the files that he was handling, no.

Q You always went through the supervisor, right?

A That was the procedure we were supposed to follow, yes.

Q And yet you're here today and giving testimony about what Mr. Summers did and said in those files, even though you had no communication with him. Is that what you're telling us?

A No, I would be telling you that from the reports that I saw on the board, there, that would be there.

Q So you're basing your opinion solely on what's in the file, right?

A Based on what I saw on the screen, yes.

[97] Q All right. And if the file contained self-serving information, obviously your decisions would be based upon those self-serving memos, wouldn't they?

A I don't know what you mean by "self-serving."

Q Okay. All right, let's talk about what you didn't show on the screen. The Carlson case. That's the first one you talked about last night. I would like to provide counsel with some copies of some of the documents which are contained in the file which was given to us, only a couple of which have been shown on the screen. Here's the court's copy. I'll provide you with the original.

This is marked 146, Exhibit 146. Now, we're going to put some of these up on the screen, and Mr. Brown, you are welcome to look either at your copy of those files or at the overhead, it makes no difference to me.

You're welcome to look at the original file, too, which I understand is now being handed to you.

MR. BELNAP: Can you give him just a moment, please?

MR. HUMPHERYS: Sure.

Q (BY MR. HUMPHERYS) I want you to be able to see this, too, Mr. Brown, if we can. Now, what I would like to do, I brought my own pad since I didn't want the [98] trial to run out yesterday, and this isn't quite as fancy as State Farm's, but let me see if I can put it here. Okay, we're going to make it.

Okay, now, let's just talk briefly about the facts of this Carlson case so that we have it in mind. That's very important in order to understand whether State Farm treated these claimants fairly.

Now, you understand that the accident occurred in November of 1980, correct?

A Let me look at my notes, here, if you would, just a second.

Q You bet.

A Yes, November 17th I've got.

Q And the accident in question is where Scott Carlson, who was a young man, the son of your insured, Thad Carlson -- Let's just review briefly, Summers talked about it, and quite frankly, when I heard him talk about it I thought he was embellishing a little on the facts. They're incredible facts, but he wasn't. He was suffering from severe emotional upset and mental illness, wasn't he?

A It's my understanding that he had been treated for some time before this accident for what the doctor, I believe, diagnosed as schizophrenia.

Q And he went out and tried to commit suicide [99] by running his car into a pole and a sign and some other objects.

A I understand that was, I believe, the first occurrence.

Q And though he was hurt somewhat, not seriously, he was taken to the hospital and admitted to the psychiatric ward, right?

A I believe that's correct.

Q He escaped from there shortly thereafter, went home and got his father's station wagon, and went for a ride again. And it was at this time when the accident occurred, right?

A Yes, I believe he was in the station wagon when this accident occurred.

Q All right. And what he did was, he was traveling, I believe, in one of the lanes north of Logan, about 30th North, and as a car coming in the opposite direction came, he immediately swerved to the left and had almost a head-on collision with the vehicle. Does that sound about right?

A I recall this to be what we discussed as a head-on collision.

Q And this vehicle was full of five individuals, Donna Box, Craig Box, Jerry McCasserty, Marla, and Alana McCasserty. Do you recall that?

[100] A Yes, it was a very horrible accident.

Q Donna Box and Craig Box were killed, weren't they?

A Yes.

Q And the three others were injured, weren't they?

A That's the best I recall, yes.

Q But Scott Carlson was not seriously injured from this accident, was he?

A I believe that Ray reported that he was not seriously injured.

Q In fact, he got out of the car and immediately started to go down the street, and when a semi came by, he threw himself in front of the semi, again, to try and kill himself.

A That's my understanding.

Q But he didn't succeed on that one, did he?

A No, he didn't.

Q He was taken to the hospital, he sustained some serious injuries, but certainly not fatal injuries, did he?

A I believe that Ray indicated that he didn't have serious injuries.

Q And it was known from the very beginning that Mr. Scott Carlson had severe mental disorders; wasn't it [101] known at that time?

A No, I recall that it was some months later that we got information from his doctor, there was a psychologist, I can't recall his name right offhand.

Q All right, now, let's talk about what took place. First of all, we have a letter, we have the date up there, November 18, 1980. You say you didn't know about his mental disorders until months after. Here's a letter from Wendell Bennett, it's dated about a week and a half after the accident. Maybe it's even a week. Do you have that letter in front of you?

A Yes.

Q All right. The named insured is Thad Carlson. That's the father, right? I've got a pen that keeps shaking, I don't understand. All right. It's addressed to Thomas McGlinn, who is the supervisor, right?

A Tom McGlinn was the superintendent.

Q The superintendent, excuse me.

A Yes.

Q "Dear Tom." All right, now I'd like to draw your attention to this area down here in the third full paragraph, and start right here where it says, "I would."

"I would be inclined to believe that the [102] present Supreme Court justices," that's referring to the Utah Supreme Court justices, right?

A I'm assuming so.

Q "Would be inclined to go along with what I see as being the majority view that an insane person is liable for his own negligence." It was known with this person that he was insane, wasn't it?

A No, I think you're misrepresenting that.

Q All right, then let's move on to another page of his opinion. Let's turn to his third page. Let's read. Now, by the way, these are not my underlining, right? Those underlines are part of your file. I didn't touch any of the portions of the file in terms of writing any notes or stars or underlines or anything else. Is that correct? I want to be sure that what the jury's seeing is exactly what's coming out of your file.

A I don't know who underlined that.

Q Right. But it wasn't me. Will you accept that representation?

A If you say it is, that would be fine.

Q Would you like to look in your original file to see that wasn't my underlining?

A I don't think that would be necessary.

Q Here it says, "He has a history of mental disorder." This, again, is only a week after the [103] accident. And you're saying you didn't know about it for months?

A No, I didn't say I didn't know about it for months. I didn't know about it immediately, is what I was saying.

Q Well, isn't a week somewhat immediate? I mean he had some time to write this letter and do legal research in order to form it. That meant he knew it before November 25th. Wouldn't you agree with that, Mr. Brown?

A We found out, I think, in fact, after this memo was even done, we had a letter that was received from his psychologist indicating these things. I'm not saying that we didn't have an indication that he was having mental problems. We had that, I think, initially from Ray Summers.

Q Okay, I appreciate your clarifying that, now that I brought it to your attention. I would like to read now what is underlined.

"I would think, therefore, that in all probability the Utah courts would, as between Carlson and the injured third parties -- " So we know who they are, that is the Boxes and the McCasserty claimants, and the Carlsons, who then would be sued for the accident. " -- as between Carlson and the injured third parties, [104] the Utah courts would grant relief for the injured third parties against Carlson."

Now, you had this within a week or two after the accident, didn't you?

A Yes, we did.

Q All right. Now, the next page on Exhibit 146 is a waiver, excuse me, a non-waiver of rights. Now, the jury may not be familiar with that. But isn't that where the insurance company goes to their insured and have them sign a paper that, "We still have the right to contest coverage. And though we investigate the accident, we reserve all of our rights to deny coverage." That's what was signed, correct?

A That tells a person that there is a question of coverage, and while we investigate, the question of coverage, we're not waiving either the insured's rights or the insured's company's rights.

Q So you can still deny it based on this non-waiver agreement you had Mr. Carlson and Mrs. Carlson sign?

A It waives neither side's rights.

Q And this was signed on the 28th of November, just a few days after Mr. Bennett's opinion letter saying that the Utah courts would likely find coverage, isn't it?

[105] A Yes, his memo, I believe, had said there had been no Utah decisions, but that his opinion was that the Supreme Court might say there would be coverage. Not coverage, but liability in that circumstance.

Q Okay. Now, let's look at what happened behind the scenes. So the jury remembers, you testified last night that State Farm tendered the limits and therefore Summers was lying. Let's look at what State Farm really did.

This is the combined liability report. Do you see that up there?

A Yes.

Q This was prepared by Mr. Summers, wasn't it?

A I assume that it was.

Q Do you notice the reserve -- No, it's on the next one. We'll get to that in a minute. It lists the fatality. You knew very early, very serious injuries and two fatalities, and your policy limit was, what, $50,000?

A $50,000.

Q Plus you had PIP or medical coverage and loss of earnings and loss of household services coverages, as well, didn't you?

A We would have had these under the Carlson policy, yes.

[106] Q Both of these were insureds, weren't they?

A I -- You know, I can't recall, to be honest with you.

Q Both parties were insured by State Farm, weren't they?

A If you represent that I would accept that, yes.

Q All right, now, payments to date, none on all of these, correct?

A Yes, that's what it says it was.

Q And this was prepared on the 28th, the same day that you got the Carlsons to sign the non-waiver agreement reserving your rights to deny coverage.

A That was done on the 28th, I believe, that Ray got that non-waiver, yes.

Q All right, now let's go to the next page. Well, let me go, in the interest of time, let me -- I think that on page 4 of this CLR, all of the injuries are defined, and described by the various people. Let me have you turn to page 7 of the CLR report. Are you there on page 7?

A In just a moment, here.

Q Are you with me?

A Yes, I am.

Q Okay. Page 7. It's the same report that [107] we've just been talking about. This is what Mr. Summers prepared, correct?

Let's start right here at this second, or the first full paragraph, or maybe it's the second full paragraph. "Were we to invoke policy defense based on definitions and thereby deny coverage, we may possibly evoke legal actions, A, from hostile insureds clamoring for protection."

The insureds would be the Carlsons, right? They're the ones that need to be protected against the lawsuits, right?

A The insured on this case was Thad Carlson.

Q Okay, so that's who he's talking about. Protection of the insureds.

A I would have to read the entire report to know who he's talking a[illegible]t.

Q Aren't the Carlsons the insureds?

A I thought -- I'm sorry, I thought you said that both of them were.

Q Well, all of the Carlsons are insureds, aren't they?

A Yes, sir. I'm sorry, I thought you said that the Boxes were insured.

Q I'm sorry. If I said it I didn't mean it. All right, "A, from hostile insureds clamoring for [108] protection." So the Carlsons would be wanting protection against the lawsuits.

"B, heirs of the deceased seeking wrongful death claims and probable punitive damage claims." So we're now talking about the Boxes who would be suing, correct?

A Again, I'd have to review the whole thing to know what the thought process would be, there. I don't know what Ray is saying there.

Q "C, surviving claimant passengers seeking justifiable recovery for sustained injuries, with possible punitive damages claims." That would be the McCasserty children, correct?

A They would be three of the passengers in that car, yes.

Q And "D, associated property damage claims, all of which can conceivably result in staggering judgments with excess exposure."

Ray Summers is putting in his report that there would be excess exposure and staggering judgments, with only a $50,000 limit that would cover all of these people.

Now drop down, if you would, to this paragraph. "Considering BI," that's bodily injury, "and wrongful death claims, it is recommended that policy [109] limits be submitted for settlement, and thence mitigate our overall loss through contribution of all the cited sources."

And then to the last paragraph, "PIP claims," that's the medical lost earnings, loss of household services, right? What we sometimes refer to as no-fault?

A Yes, that's correct.

Q "PIP claims per P-3." That means that there are three accidents, at least as far as Mr. Carlson was concerned, right?

A No, that meant that the coverage was P-3.

Q Okay. But there were three accidents which would apply to Mr. Carlson, correct?

A He had three separate accidents.

Q All right. "PIP claims for P-3 are apparently an existing contractual obligation, in that we cannot discriminate part when considering the whole confrontation. The policy limits of $10,000 per P-3 is primary, with no other excess coverages indicated."

Now, let me see if I can do this, since we have this in place. Now, so that you know, I didn't all of the sudden become a brilliant hand writer, I had my secretary do this last night so that everyone could read it. Or else we might be struggling.

[110] Now, let's talk about the coverages now available to the claimants. In this category we have claimants, the Boxes, the McCassertys, their damages, and we have the liability limits, only $50,000 to be shared, not fifty each, but to be shared, or split up among all five; isn't that your understanding of the case?

A That was the policy limits carried.

Q And so the fifty would have to be shared by all five. Is that correct?

A That would have to cover all claimants.

Q Then, to the extent it might apply, PIP limits were $10,000 per person per accident; is that correct?

A I don't know what the PIP limits were for people in that car.

Q Okay. Now, we also have a claimant, Thad Carlson. He was responsible for the medical expenses of his son, Scott, for three accidents. There was no liability coverage that applied to him, right? Because it was his son. Are you with me on that?

A Yes.

Q But he did have claims for PIP, or no-fault, correct?

A He would have potential claims under the [111] policy if that were a covered event.

Q All right. Now, it's your understanding, isn't it, that here we have Mr. Summers recommending that the $50,000 be immediately paid, and that the PIP payments be immediately paid, as well, isn't he?

I think we can short circuit this, because in the CCR it says specifically that both Mr. Summers and Mr. McGlinn were recommending payment immediately. And I'll show you that so you don't have to read the whole CLR if you can't see that there.

Now, you said that you didn't have any record that we had mental disorders for months afterward. Well, let's see, maybe what I ought to do is see if I've got -- I don't have an overhead.

Would you turn to the memo, which is right after that CLR, dated December 5, 1980, just two weeks after the accident. Do you see that there? And it's from Mr. Summers to Mr. McGlinn. And the memo talks about the hospital records, and that he was suffering from acute psychotic episode. Do you see that there?

And with that memo, was a report from the doctor dated December 2nd, 1980, not two months, but less than two weeks after the accident. Do you see that, Mr. Brown?

A I see that, yes, but that's, I said that --

[112] Q So what you said was wrong, wasn't it?

A No, it was not wrong. I said that we received this information after we had that November report from attorney Bennett. That was at the last week or so in November.

Q Are you denying that you said a little earlier, Mr. Brown, that you didn't have any medical information for a couple of months?

A I don't recall saying a couple of months. In my mind I was sitting here saying we didn't have -- You asked the question, did we have it immediately. I knew we got it. I didn't think it was immediate.

Q Quite that immediate. Okay. Let's now go to the next one in Exhibit 146, which is a letter from Wendell Bennett.

This letter is dated December 29, and it's, again, to Thomas McGlinn. I'd like to refer you now to the first full paragraph, and start here. Let's see if I can find the spot. Sorry, right here.

"It would appear to me that at the time of the accident involving the third parties," that's this one we're just, again, talking about, "in which two deaths and some injuries resulted, that Scott Carlson was, in the opinion of the mental health treating people, what would commonly and loosely be referred to [113] as legally insane, in that it is their opinion that he was not capable of appreciating the harmful consequences of his behavior upon others due to his mental and emotional status, principally schizophrenia.

"Based upon the information we have developed to date, it would be my opinion that we probably have no valid policy defense to assert."

Now, again, this is not my underlining. This was in your file, Mr. Brown. Continuing. "And based upon the cases, that even though Scott Carlson may have been insane at the time of the accident, that would not relieve him of liability to an insane third person."

MR. CHRISTENSEN: Rich, "innocent."

MR. HUMPHERYS: Innocent. Did I say insane? I'm beginning to wonder sometimes. "Innocent third person." Thank you.

Q (BY MR. HUMPHERYS) Next paragraph, "I would feel, therefore, that we had probably better attempt to settle the potential third-party claims against Carlson, and look to the liability carrier of the hospital and the doctors for contribution."

Isn't it true that Mr. Bennett, right here, is suggesting that State Farm settle this case, and then sue the hospital and the doctors to seek contribution?

A I interpreted that to mean that, yes.

[114] Q All right. And this is approximately a month after the accident, correct?

A Yes, a little over a month after the accident.

Q All right. Now, let's see what you, Mr. Brown, did, in light of all of this overwhelming evidence. Let's look at that CCR, the claim committee report. Now, the jury's seen one in Campbell, I don't know that the jury's seen another one. Now, here we have present reserves set at $50,000. Now, a reserve is that amount which the insurance company sets aside to settle, correct?

A That's what you put in as, what you feel might be the potential of the case, yes.

Q All right. $50,000. This is for the liability coverage. Now, before I get to the bottom of this page, I want to go to the next page, because that's what I was asking you before. Wasn't Mr. Summers recommending that we settle this? And this is on the next page of your claim committee report.

Your question number 10, "Has our attorney been consulted? Yes." And you typed in, or the superintendent typed in, "Yes." We have the attorney's opinion, yes.

Number 11, "Recommendations of our attorney. [115] Extend coverage."

Number 12, "Name of our claim representative and recommendation? Ray Summers."

His recommendation also was to extend coverage. Wasn't it?

A Both parties recommended that we extend coverage.

Q Number 13, "Recommendation of claim superintendent." Which was Mr. McGlinn. "Extend coverage." Do you see that?

A Yes, I do.

Q All right, now I want to go to the last sentence of this report, starting right here. "We had determined through the research of our attorney, Wendell Bennett, that legal liability for these torts would follow, even though Scott was mentally incompetent at the time."

A I'm sorry, counselor, where were you reading from on that?

Q The last sentence on the second page of your claims committee report.

A Okay.

Q Now let's go to the last page of your claim committee report, Mr. Brown. And then we'll go back to the first page and look at what decision you made. [116] Looking at the recommendation, that's right up here, that's the last paragraph of the report. I'd like to read it in total.

"My recommendation, and the recommendation of our attorney, as well as our field claims representative, is that we extend coverage under coverages A, B, G-100 and, if necessary, coverage P." That covers all of these things I've got listed up here that we just talked about, right?

A It would cover all the coverages involved on this case.

Q Next paragraph. "With regard to the legal liability aspect of this case, the majority of the authority that we have indicates that insanity does not insulate the defendant from damages awarded as a result of his actions in civil cases.

While this might be a valid defense in a criminal action, it is not a valid defense in a civil action."

Last paragraph. "My recommendation is we extend coverage and seek best settlement possibility in conjunction with the hospital and the doctors."

Again, meaning that you were going to proceed and sue the doctors and hospital to get reimbursed back, right?

A That would, I would assume that's what they [117] meant.

Q All right, now, let's go to your decision. Mr. Brown, I would like you to read your decision to the jury, starting right there.

A The decision of the claim committee, which I would like to state to be at least two attorneys, and to several management people with hundreds of years of experience in handling claims.

Q Who was the chairman?

A I wrote the final decision, but it was the decision of the entire committee. You were saying is it my decision, it was the decision of the committee.

Q All right. Go ahead, then.

A And the decision of the committee was to "Deny P coverage, file a declaratory action for the court to determine if the insane person can have an intentional act. The committee feels that this was an intentional act, and coverage should not be extended. Also deny B coverage on the same basis. Extend G coverage to the insured."

Q You reached the decision to deny all coverages, didn't you?

A No?

Q Perhaps you'd better read it again.

A I said extend G coverage to the insured.

[118] Q With the exception of G coverage. That was the collision loss to his own vehicle, right?

A We said file the declaratory action. I don't know if a jury knows what that is, counsel.

Q And we're just going to go into that. A declaratory judgment action, sometimes we call it a dec action, right?

A Yes.

Q Okay, I'll just abbreviate it that way. Isn't that where State Farm sues their insured to get out of paying coverage?

MR. BELNAP: Your Honor, I'm going to object to that question on the basis that that is a recognized procedure under the code, and to the extent the question implies that it's an improper procedure, it is not appropriate for such an implication.

MR. HUMPHERYS: Your Honor, he's making a speech.

MR. BELNAP: I'd be happy to approach the bench, Your Honor.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Isn't that where State Farm sues their own insured to ask the court to protect them so they don't have to pay any coverage?

A No, that's absolutely wrong.

[119] Q All right, then you tell us what it is.

A A declaratory action is where you take an issue to the court when you have a valid question as to whether or not there is coverage. And you ask the court, or the jury in that circumstance, to determine whether or not there is or there is not coverage.

Q All right. Now, isn't it true, though, in your complaint, it would be State Farm versus Carlson?

A To have any complaint you have to have two parties on it.

Q That's right.

A Yes, if we brought the question to the court, we would be the first one named.

Q All right. So it would be State Farm versus Carlson, and the relief that you would be seeking from the judge or jury would be a finding of no coverage, wouldn't it?

A No, we would be wanting the court or the jury to determine whether there is or there is not coverage.

Q But if you were willing to pay coverage, why do you file the action, Mr. Brown?

A If we were going to deny coverage we'd just simply deny coverage. We did not have Utah law on these issues at this time. Wendell Bennett said that in his report, his letter that you started out with. Without [120] having a Utah decision, he was taking other states and saying this might happen.

Q Wasn't he also --

A We were wanting the courts, the jury to tell us, "Is there coverage in this case?"

Q And you would be taking the position that there isn't coverage, wouldn't you, in a dec action?

A We're not taking the position that there is no coverage. We're asking whether there is or there is not coverage.

Q Hold it, Mr. Brown. Before an issue can be decided you have to have one party taking one side and one party taking the other. If you don't have two sides of the issue, there isn't a lawsuit, is there?

MR. BELNAP: Your Honor, I object again, that the declaratory judgment action is for a court to determine an issue. It doesn't have to be as stated by counsel.

MR. HUMPHERYS: Your Honor, he knows very well that when an insurance company sues an insured on a dec action, they are seeking non-coverage, and it would be the insured's responsibility to prove they are insured. He knows that darn well.

MR. BELNAP: Your Honor, let's approach the bench.

[121] THE COURT: All right.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. HUMPHERYS) All right, now, the question was, Mr. Brown, isn't it true when you, as State Farm, files a dec action, you file a complaint, you state what the issue is, and then in your prayer, and "prayer" is a term that's a term of art meaning the relief that you're seeking, you would say the plaintiff, who is State Farm, would seek the ruling that there is no coverage based on the above facts.

A Counselor, it's my understanding that a declaratory action's sole purpose is to determine whether there is or is not coverage, so that you would not have to go further with any other type of lawsuits. If they said that there is coverage, then you go ahead and settle the case. If the court said that there was no coverage, then that would determine whether or not the coverage existed.

Q And State Farm's --

A I have never filed a petition, so I can't tell you the legal terms of what you would put in the petition.

Q Then that's fair. If you don't know, then say you don't know. I have no problem with that.

[122] MR. HUMPHERYS: Judge, in light of the bench conference, I would be happy to have the court issue an instruction that when a dec action is filed, an insurance company is seeking non-coverage. If that happens now or later, that's fine, too.

THE COURT: I think if there's any disagreement about what that means, what we should do is have the parties submit their proposed instructions and the court will make a determination and instruct accordingly.

Q (BY MR. HUMPHERYS) In any event, Mr. Brown, as of the first part of January, you were taking the position of no coverage, weren't you?

A We were taking the position that we wanted to have the court determine whether or not there was coverage.

Q All right. And here in your claim committee report, which is dated the 14th of January, 1981, you have given instructions to deny coverage in all but the one collision G coverage, right?

A The committee decision was to deny the PIP coverage based on an intentional act.

Q And liability coverage.

A No.

Q What does this say right up here, Mr. Brown? [123] Doesn't it say liability?

A It said file the declaratory action for the court to determine the liability coverage. That was the issue that we were talking about under the declaratory action.

Q All right, now, let's read here, first of all, let's find out who this note is from. This note was from Manuel Mendoza, right?

A I don't know.

Q Okay. We'll confirm that in just a moment. There's a memo from him. And this is dated 1-26-81, "Move for declaratory judgment on A, B, and P coverages." That's liability, property damage, and PIP coverage, right?

A Yes, that's what that note states.

Q And when you move for summary judgment, that means you're seeking a judgment that those coverages don't apply, correct?

A I don't believe it says move for summary judgment. It says go through the declaratory action that we were talking about a while ago.

Q I'm sorry, you said you don't think it says declaratory judgment?

A No, you said summary.

MR. CHRISTENSEN: You said summary.

[124] MR. HUMPHERYS: I'm sorry.

Q (BY MR. HUMPHERYS) Move for declaratory judgment, which is that State Farm would not have to extend coverage?

A No, which is to ask the court to determine whether there is or is not coverage.

Q All right, let's look at your next claim committee report. In the meantime, by the way, when you sue your own insured under a declaratory judgment action, he's required to hire his own lawyer, isn't he, at his expense, and defend the case?

A Yes, he had his own attorney on this file three days after the accident.

Q And if Mr. Carlson did not answer your complaint, then the judge would enter a default judgment of no coverage, wouldn't he, based on your understanding?

A I've never had that happen, so I wouldn't know.

Q Okay. So he had to hire a lawyer to fight State Farm on coverage. Now let's look at your next CCR. This one now is entitled "No-fault." The reserve is $10,000, that is that which you have set aside to settle the case, right?

A Yes, under the reserve, uh-huh.

[125] Q All right. Now, again, before we go to your decision, let's look at what everyone was recommending. This is the next page on this same document. Questions 10 through 13. They're the same. All three are recommending coverage, aren't they?

A It appears that this whole first two pages or so are identical.

Q Right. And it's the same identical sentence we read there, isn't it? The last sentence of the page. But the last page is a little bit different, and let's read that.

I'm not finding the overhead on it, so let me just read it. Do you see that on page 3? I'm sorry, that's because I was still in the old claims committee report. I do have it.

This is page 3 of the same report. I'd like to read under summary, Roman Numeral IV, the first sentence. "We have had the benefit of legal research on this question by our attorney, Wendell Bennett, and it is his feeling that since Scott Carlson was not legally competent, we could not successfully defend and fail to honor the PIP claim presented on his behalf."

Isn't that fairly clear that Mr. Bennett was telling you you needed to extend coverage?

A That is, but if you go ahead with that same [126] summary, it says that had there been some question as to the sanity of Scott Carlson prior to his attempted suicide, we would, of course, have a more valid form of policy and statutory defense.

Q Right. But it says, "This is not the case on this file." Doesn't it?

A It says that, but obviously that was incorrect.

Q Okay. Now let's go back to your decision and see how you ruled, Mr. Brown. This is back at the first page of your claim committee report. Would you read to the jury how you ruled?

A The claim committee -- and they made, it was the same date -- it was the same claim committee group, it was the same decision on the thing. It was deny the P coverage, file the declaratory action for the court to determine if the insane person can have an intentional act. The committee felt that it was an intentional act, and coverage should not be extended. Also deny B coverage on the same basis, extend G coverage to the insured.

Q All right, now, let's go to the memo from Manuel Mendoza. Manuel Mendoza was whom?

A I'm sorry, was that a question?

Q Who was Manuel Mendoza?

[127] A Manuel Mendoza was the general claims consultant that was over this area at that time.

Q At the home office?

A He was located in the home office.

Q We've seen a video from him when he was part of the '86 divisional claims conference when he introduced Mr. Kornblum. All right, now, this was a memo, was it not, addressed to the file, regarding the decision. Do you see that?

A This was the general claims decision, yes.

Q And though it's not personally signed, it's electronically signed by Mr. Mendoza, right?

A Yes, his name is the person on it.

Q All right. General claims decision. Let's read the first two sentences. "This is to confirm our personal discussion of this decision on 1-26-81 with divisional superintendent William Brown." That's with you, right?

A That would be me.

Q "We agree with the advisory decision that P coverage should be denied, that coverage A and B should be subject to a declaratory action to be filed promptly." Now, let's keep going and see what happened.

You recall that shortly, within a day or two after that, that you filed, or that you sent a letter to [128] Mr. Carlson certified mail. Do you remember that?

A Apparently superintendent McGlinn sent a letter to Mr. Carlson.

Q I'm sorry, I meant you, meaning State Farm. And I need to differentiate between you and State Farm sometimes. Sorry. Okay.

You see the letter is to Thad Carlson, that's the father of the boy involved, it was sent certified mail. Let's read beginning here in the third full paragraph, second sentence.

"Because of the unusual nature of this case, we have decided to petition the Utah courts for a declaratory action to see if, in fact, coverage should be extended for bodily injury, property damage liability, as well as coverage P, which would include no-fault benefits. We have been advised by

our attorney, Mr. Bennett of Salt Lake City, that it may take as long as three to four months before we can have the court act on our petition."

The second page, starting on the third full paragraph. "It is for this reason, and any other reason which now exists or hereafter occurs, that we might disclaim protection otherwise due you under the terms of your contract, or to settle and/or defend any suit or suits brought against you as a result of these [129] accidents, or to pay any judgment as a result of any suit."

Isn't that saying that you will, you reserve the right to disclaim any protection, including the right to defend him and the right to pay any judgment against the Carlsons, as a result of this accident?

A That wording is the same thing that we would have in the non-waiver that we've talked about a few moments ago, and it simply says that the rights of both parties are continuing. You don't waive any rights, in other words, while this decision's being made.

Q But you're telling him specifically that you might disclaim protection in all regards on the coverages.

A No, I think if you go -- If you read one line or so out of this, it's a little difficult. But if you go to the first paragraph on that, it says the field claim representative, Ray Summers, has been instructed to handle the physical damage claims on both of your vehicles to a conclusion.

Q We've excluded that out, because you said you've extended coverage for that. The actual crash damage to the cars, but that's all. We don't need to go into that again. We're stipulating to that.

A And you're stipulating that we agreed to pay [130] liability, then?

Q Well, let's find out why. Not at this time, you weren't agreeing to pay, were you?

A No, we were paying property damage liability.

Q Yeah, but not liability limits. Not BI limits.

A Not BI.

Q All right. Now let's go to the next paragraph. "Furthermore, you are hereby notified that this company expressly reserves its rights and defenses under the policy, including the right to disclaim liability and deny protection under the terms of the contract, at any time, should we elect to do so. Any claim, action, or judgment will be your responsibility."

And it was sent by Thomas McGlinn, and a copy of this was sent to Ray Summers, wasn't it? Is there any reason why you would dispute Mr. Summers' testimony when he said that he was being instructed to unreasonably deny coverage in this case, contrary to what you just said last night?

A Certainly. I don't think that we were denying coverage in this. We were saying we were going to file a declaratory action, and get this case determined by a court as to whether there was or there was not coverage.

[131] Q And you were taking that action, even though your own attorney was telling you, you had no basis for it; isn't that right?

A Our attorney said that there was no Utah law on the issue. He said he thought that maybe the Supreme Court might rule in a certain way.

Q All right, let's look at those words you used, "thought," and "might." I don't think those are the words he used. But let's go to the next event that occurred in this file.

Now, do you remember that Mr. Carlson had to hire a lawyer to try and fight this?

A No, I remembered Mr. Carlson had a lawyer from the beginning on this case.

Q All right. Then that was because of the reservation of rights, wasn't it?

A No, it wasn't. He had this lawyer immediately after the accident occurred.

Q All right, let's look at it. This is a letter from, well, I think it's from Mr. Fillmore, who works for Hoggan and Jensen. Now, we've heard from Mr. Hoggan and Mr. Jensen in this trial. Mr. Campbell went to the same law firm. But this is a letter from them to Mr. McGlinn, again, the superintendent, and it's dated February 3, 1981.

[132] Now, let's go to the text of the letter and find out what's happening. If you'll please turn to page 3 of that letter, Mr. Brown. Do you see that? Let's read what's happening on the part of Mr. Carlson.

Starting in the first full paragraph, "We should also advise you of the great emotional distress being experienced by the Carlson family in the aftermath of these unfortunate instances, which emotional suffering has been greatly compounded and aggravated by your delay in acknowledging coverage, and, now, your decision to deny coverage altogether. Furthermore, your decision has seriously prejudiced their legal position in several respects. First, the Carlsons' attorneys had worked out a settlement arrangement with the civil plaintiffs based on a policy limits settlement with State Farm."

That means, doesn't it, that they had worked out an agreement that these claimants would settle for $50,000 if State Farm would pay it.

A The Carlsons' attorneys, you're talking about.

Q That's right. They'd worked out that agreement, right?

A That's what he's saying there.

Q All right. Let's continue on. "This [133] settlement agreement cannot be consummated now, and the Carlsons will inevitably be drawn into civil litigation and incur substantial additional attorneys fees, although it is State Farm which is contractually obligated to defend Carlsons in such litigation."

He's talking about, because you would not defend him due to your non-coverage position, that he had to incur his own attorneys fees, didn't he?

A No, that's not what I got there. He was represented by this firm prior to anything having to do with our non-waiver of coverage.

Q Isn't he saying that he will have to incur more attorneys fees in light of State Farm's position?

A If they were drawn into civil litigation. That could be a result.

Q Let's continue. "They may also be faced ultimately with liability far in excess of the policy limits settlement which we had previously agreed upon."

Now I'd like to drop down here to this paragraph and draw your attention to that. "In addition, the family has now begun to receive the usual derogatory collection letters from a host of medical creditors to whom they are indebted, a problem which is compounded by the late payment interest surcharges on all such bills.

[134] "Although we do not have any grounds for specifically asserting ulterior motives on the part of State Farm, such a stalling for purposes of interest saving or to compel the Carlsons to accept a smaller insurance settlement, we do feel, given the state of the law and the facts of this case, that State Farm's actions to date reflect a callous insensitivity to the rights and the emotional and financial needs of the entire Carlson family, and are clearly unconscionable as a matter of law.

"Thus, this letter should serve to put you on notice that we perceive State Farm as acting in extreme bad faith in this matter."

You recall reviewing that, don't you, at the time that letter was sent to State Farm?

A I believe that letter was sent to Tom McGlinn.

Q Yes, but it went into the file and you reviewed it, didn't you?

A I'm sorry. You mean this last week?

Q No, I'm talking about at the time it was sent to State Farm. I just want to show the jury the last page, while you're looking at that.

A I don't recall reviewing that letter, no, not at this point.

[135] Q Signed by Bill Fillmore. So you don't recall reviewing this letter at all?

A Not until this last week.

Q And yet you're here giving opinions to this jury that Mr. Summers was lying when he talked about the effect that State Farm was having on the Carlsons, their own insured, State Farm's own insured, and causing all of these kinds of emotional distress and problems, and he was lying when he said that, Mr. Brown?

A I indicated that he was not telling the truth when he made his allegation, the specific allegations that were shown in his testimony.

Q Perhaps, Mr. Brown, it's you that's lying about what Mr. Summers said in this file.

MR. BELNAP: Your Honor, that is argumentative, and I would move to strike.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) All right, now, let's go to the next correspondence. You see the letter from Mr. McGlinn to Manny Mendoza, State Farm, home office in Bloomington? You'll have to forgive me, I don't have an overhead of this. Do you see that letter?

A On the 24th? I'm sorry.

Q The 24th of 1981.

A Yes, I do.

[136] Q Again, just shortly after this letter from Bill Fillmore advising State Farm of the bad faith and calloused expression of what they were doing. Now, here's Mr. McGlinn writing Manuel Mendoza. Now, it's not common, is it, to have a superintendent bypass you as the divisional superintendent; isn't that right?

A I was copied with this letter.

Q Right. But it's not common to have him bypass you and write a letter directly to home office, is it? That's not normal procedure, is it?

A No, normally they would go through the division.

Q So it bypasses you and writes directly to Manny Mendoza. I'd like to read the first paragraph. Do you have that in front of you?

A Yes, I do.

Q "Dear Manny. Enclosed you will find recent correspondence on this file." He was sending him a copy of Mr. Fillmore's letter we just reviewed, correct? And he's also sending him copies of the opinion letters of Wendell Bennett.

A I would guess he'd be showing all of the correspondence that he'd received.

Q "Enclosed you will find recent correspondence on this file, and on reviewing this material you will [137] see that our defense counsel, Wendell Bennett, indicates that our chances of having the court determine there is no coverage for this loss appears to be remote."

On the next page, he continues to write, "It has been my recommendation and the recommendation of our field claims representative, as well as our defense counsel, that we extend coverage. There are other factors to be considered in this case, especially the difficult emotional and financial burdens that are facing the Carlson family. It is my opinion that we should consider these factors in reaching our decision as to whether or not we should extend coverage without petitioning the court for a declaratory judgment."

Do you see, Mr. Brown, that even Mr. McGlinn is pleading with State Farm to change its position?

A I see that Mr. McGlinn is stating that his recommendation is that we change the decision on that, and extend coverage.

Q And he bypassed you, didn't he?

A No, he did not bypass me. He copied me with this, and probably with my sanctions on it.

Q Isn't it true that, as a result of this action taken by Mr. McGlinn and Mr. Summers, that State Farm eventually changed their position and then began to settle?

[138] A I think immediately after this we said that we'll waive the coverage question on it, and that we won't have to go through the necessity of a declaratory action.

Q So Mr. Summers was telling the truth, wasn't he, when he said that State Farm forced him to take coverage positions which were not supported by the case and facts and the law.

A I'm sorry, I'd have to look at that allegation. Let me see. Can I glance real quick at my notes on that?

Q You can look at whatever allegation you want.

A In looking at the allegations that were in Ray Summers' transcripts, I don't really get the idea of what you're saying there is what his allegations were.

Q He also mentioned that State Farm would try and take advantage of the financial duress of people in order to effect a settlement. Remember him saying that? I'm not necessarily referring to the exact testimony right in the paragraph where he was talking about this case. I'm saying generally he talked about that, didn't he?

A Well, I know that that's not what our philosophy is with State Farm, and we certainly do not do that.

[139] Q And he also said that they were encouraged to sue doctors and hospitals to try and recoup whatever they have to pay, or avoid payment. Didn't he testify to that?

A I'm sorry, I don't recall that.

Q Yet right here there is evidence that State Farm was doing that very thing, isn't it, right there that we've reviewed it?

A We were forcing -- I'm sorry, go with your question again.

Q That State Farm tries to encourage malpractice actions against doctors and hospitals in order to avoid paying out, or, in getting reimbursed for what they have had to pay out.

A I'm sorry, I don't see any connection with malpractice on this case that you're talking about, here.

Q Don't you recall Mr. Bennett saying that we ought to settle and then seek contribution from the doctor and hospital? We just read it.

A We did not --

Q A few minutes ago.

A We did not do that.

Q But isn't that what he just said?

A Mr. Bennett?

[140] Q Yes.

A He said that would be a possibility, yes. But we did not do that on this case.

Q And isn't it true that you also had that in some of your reports, you would be seeking contribution against the hospital and the doctors?

A Quite frankly, I'd have to go through the file. I don't recall.

Q All right, go to the next item. We have a letter from Mr. Bennett, which is April 7th. The only reason I'm putting the first page on is to establish the date and that it was from Mr. Bennett, and it was to Mr. McGlinn.

Now I'd like to turn to the second page of it. Now let's read how you negotiated this case, Mr. Brown. The first full paragraph I would like to read, and I'll ask you a question.

"For some reason Mr. Patterson -- " Let's stop and make sure we know who Mr. Patterson is. Isn't Mr. Patterson the one who represents all of these five claimants who were injured in this accident?

A I believe that's correct. I didn't recall his name.

Q "For some reason Mr. Patterson has not made demand for the settlement of the property damage [141] liability portion of the file. However, that may be due to the fact that a collision damage carrier has already paid the property damage, and that will be a subrogated situation.

"I haven't pointed out to Mr. Patterson that he has not made demand for the property damage, and if his clients sign the release and the settlement agreement that will be presented to them, they will, in effect, be concluding both the property and the bodily injury and death portions of the claim by executing the release."

Isn't Mr. Bennett saying right here that he is not tendering the property damage limit, and is not disclosing it to opposing counsel, in order to save State Farm that money?

A He is saying there that he didn't know whether or not their own insurance company had paid that and would be subrogating against State Farm.

Q And he's saying, "I didn't disclose it. But if they sign the release, it'll release everything." Isn't that what he just said?

A Under the subrogation agreements of insurance companies, the signing of the release would not make any difference. If his company had paid for these damages, they would still have the right to come against State [142] Farm, and State Farm would honor that.

Q Isn't it true that shortly before this release was executed, Mr. Patterson discovered that there was a property damage limit, and then asked for the additional property damage claim, and you paid it?

A That could be that we paid it, yes.

Q But you didn't offer it, did you, until he made demand for it?

A I don't know that we'd ever -- I don't know what you're really referring to on that, but that's --

Q Let's read the last sentence of the letter. "As we have discussed in the past, we will be in a lot better position to determine that issue in our favor with two insurance companies debating over the matter, as opposed to the Carlsons debating that matter with State Farm." That relates to the PIP coverage. That whole paragraph there is talking about whether or not State Farm should extend the PIP coverage. Do you see that?

A Can I read that real quickly?

Q You bet. Take your time.

A Okay. I've read that, yes. Now, what was your question?

Q Isn't it true that Mr. Bennett was saying, "We're going to deny PIP and let the expenses be paid by [143] Blue Cross Blue Shield"?

A The file had reflected on this that Blue Cross and Blue Shield was willing to come in and pay for these bills, if State Farm did deny any of the bills.

Q And State Farm denied them, didn't they?

A I think that he's saying in this, if the Carlsons agreed not to go against State Farm on this, I think that's what it was underlined there, and that if Blue Cross and Blue Shield paid for this, that they could bring a claim against State Farm, and then it could be determined who would pay it, if they had any questions.

Q Do you recall one of the criticisms of Mr. Summers against State Farm was that State Farm would try and press to have their insureds go against their own medical insurance company to avoid paying it themselves? Wasn't that one of his criticisms?

A I recall in this case, if there was a question of coverage. It's a little bit different if there's a clear liability situation. Here, it was felt that the PIP coverage was not going to apply due to an intentional act, it was not an accident. We

agreed to waive that later on because we didn't want to put the Carlsons through all that after a while.

Q After they threatened you with punitive [144] damages and a bad faith claim?

A This case was settled within six months after the date of the accident with serious injuries. That's not a long time.

Q All right. Now, let's look at, you had another claim committee, and this is as it relates to the $50,000 reserve that you already had set aside to settle these claims long before you denied; is that right?

A We put that as a potential reserve when we started this, due to the seriousness of the injuries.

Q All right, now, you have a new decision, and the date of this is April 15, 1981. And here you are as the chairman again. "Extend $50,000 authority to superintendent. Extend B coverage for possible compromise." B coverage is what cove.age?

A That's property damage liability.

Q So you were suggesting that they compromise the coverage on property damage, weren't you?

A We were extending coverage under that, and saying there might be some possibility of compromise.

Q Even after all of this, you were still trying to chisel paying the full limits of this case, weren't you?

A No, we do not chisel anybody, sir. We try to [145] pay everything that we legally owe. There was a question on this as whether there was a legal obligation.

Q Apparently it wasn't in the minds of anyone but yours, Mr. Brown; isn't that right?

A No, that's absolutely not right.

Q All right. Now, let's look at the actual release that you ultimately ended up with in having the Carlsons sign. You remember that before you would pay the Boxes and the -- boy that last name is always one that gets me --

McCassertys, that you went to the Carlsons and said, "Carlsons, before we pay them the $50,000 limits, you have to give up your PIP claim against us"? Isn't that true?

A There were negotiations with their attorney, and I believe Mr. Bennett was negotiating, or discussing this with their attorney. That was their agreement that they reached.

Q That Carlsons would have to give up their limits of up to $30,000 in PIP coverage in order for you to pay the $50,000 to the claimants; isn't that exactly what you were negotiating?

A The agreement was that they would go to Blue Cross and Blue Shield. They had indicated that they were going to give coverage on it, and then if there was [146] an issue between the two companies, then we could work with each other on this through arbitration or whatever to get it cleared up.

Q Isn't it true that the only reason Blue Cross and Blue Shield paid is because State Farm wouldn't?

A Blue Cross and Blue Shield had indicated early, early on in this case that they were waiting for us to make a decision before they went into it.

Q Now, one of the things that maybe the jury is not sensitive to is the issue of the PIP coverage. Now, the PIP coverage to the Carlsons, that's a primary coverage, isn't it?

A Yes.

Q And under the law of Utah, it specifically says that in all automobile accidents, the PIP coverage is to be paid first.

A If there would be coverage, that would be correct.

Q And yet you denied coverage and forced Blue Cross Blue Shield, who would not have that obligation, to pay it.

A All the way through this there was a question of whether or not this was an accident or an intentional act. If it was an intentional act, there would be no coverage under PIP coverage by Utah law.

[147] Q Blue Cross would be a secondary coverage to your PIP, wouldn't it?

A They would become primary if there was no coverage under the auto policy.

Q All right. Now, let's look at the release that you had the Carlsons sign. I know it's small, because this was done on legal size and we had to reduce it to get it on the overhead, so I'll try and read the portion which applies.

You state here that, in turn for paying all of the claimants $50,000, that the Carlsons give up all of their rights against State Farm to seek PIP and to bring any claim for bad faith or anything else; isn't that correct?

A I'm sorry, I'm not seeing the part on bad faith that you're reading from.

Q Well, we'll get to that in a minute, then, if you're not seeing it. It says, "Release all claims, of whatever nature, kind, and character," right?

A Well, yeah, that would mean it's a complete release, yes.

Q So that included bad faith claims, didn't it?

A Well, I guess it would. I thought you were reading that in there.

Q We will. We'll get to a letter from [148] Mr. Bennett when he talks about your bad faith claims. All right, let's go to number 4.

"The Carlsons expressly agree that they personally shall not file any lawsuit for the purpose of compelling State Farm to pay for any medical expenses incurred by Scott Carlson as a result of the November 17, 1980 accident, nor will they file any lawsuit to compel State Farm to pay any other no-fault benefits to which Scott Carlson might otherwise be entitled."

So in other words, State Farm put financial pressure on the Carlsons to give up their claim in order to protect them from the claims of all of these serious injuries. Isn't that what State Farm did?

A No, State Farm made a compromise settlement with these folks when there was a question of coverage.

Q Do you recall a letter shortly after this where Mr. Bennett writes you and says, "We've now consummated the deal, and this should extinguish all of our potential excess claims against us"? Meaning State Farm?

A You say that was written to me?

Q Perhaps Mr. McGlinn.

A Okay. I didn't remember it offhand, no. That's --

Q All right.

* * *

[150] * * *

Q (BY MR. HUMPHERYS) We just talked about, now, you have just received a threatening letter from the Carlsons' attorney, Mr. Fillmore, threatening bad faith and punitive damages. We talked about a letter from Mr. McGlinn to Manny Mendoza at home office seeking, almost pleading to have a reversal of that denial. We just went through a letter and a release, a letter from Mr. Bennett and a release that was prepared by Mr. Bennett, and we talked about the effect of that.

Now, what I would like to do, Mr. Brown, is I want to show you what has been previously marked as a trial illustrative exhibit, that means that it's not in evidence, but it is simply to illustrate certain things.

Now, to allow you to be able to see that, and the jury, I guess I'll just put it up here. I think that may give you a chance to see it, too. If you need to, feel free to get up and move around.

[151] Okay. I'll represent to you, Mr. Brown, that in this illustration, it was a hypothetical of a company, an insurance company that desired to gamble with their insured, who was facing excess exposure, with the hope that they may not have

to pay the policy limits. And what they would want to do, and what they would not want to do, or have in the file in order to protect themselves should a bad faith claim follow.

Now, referring your attention to the Carlson case that we just went through, item number one, it says things that an insurance company would want in the file. That is, if they were going to gamble and they didn't want to have a bad faith claim, or excuse me, if they knew there might be a bad faith claim, what they would want in the file.

Number one, letters, memos, reports giving the appearance they do not believe they are putting policy holders at risk.

In the Carlson case there were numerous letters and memos indicating that the Carlsons were being put at risk, weren't there?

A There were several in there from Ray and from the superintendent. Is that what you're referring to?

Q Yes, and Mr. Fillmore, the attorney for the Carlsons.

[152] All right, so you wouldn't want those in a file. Second, similar letters from defense counsel. Defense counsel, meaning the attorney represented by the insurance company, saying that you don't want defense counsel saying that the policy holder's at risk.

Isn't, in the Carlson file, your defense counsel, Wendell Bennett saying, "There is coverage, the possibility of succeeding on a policy defense is remote"? Isn't there evidence of that in the file?

A He says that his opinion was that the Utah courts would, I think, basically say that there would be liability on a person if they were insane, and that there's a possibility of coverage.

Q All right. So you wouldn't want one of those letters in the file if you were looking to have a bad faith claim.

Next, letters, reports, and analysis emphasizing favorable evidence, and minimizing adverse evidence. Isn't it true in the Carlson file you have just the opposite? You have a lot of evidence which indicates there is adverse exposure to the Carlsons?

A There is evidence in there indicating that there are questions of coverage, there's evidence in there to indicate that there may not be a question of coverage in some circumstances.

[153] Q All right. Next, you want a supporting expert. I don't know that we had any experts in here that was involved in the Carlson case.

Next, evidence that policy holder agrees with decision not to sue. In this case, the Carlson case, we had evidence that the insured did not agree with your decision of denying coverage, didn't you, from Mr. Fillmore?

A First of all, we did not deny coverage. We said we were thinking about going into a declaratory action, which never occurred. And we got a letter from his attorney saying that he didn't want us to do that, yes.

Q All right. Now, things that an insurance company would not want in the file if they're going to gamble with their insured's protection. You wouldn't want an evaluation from your own defense counsel indicating a risk of excess exposure.

Now, isn't it true that you've got correspondence in the Carlson file that indicates there would be exorbitant judgments, if I remember the word, and excess exposure to the Carlsons if this should have to go to trial?

A From our defense attorney?

Q For, from Mr. Summers. Remember that in --

[154] A There's some information in there, I'm sorry, I thought you were referring to defense counsel.

Q This says defense counsel, but what I'm referring to is you don't want, if you're going to gamble, you don't want evidence in the file that you're going to risk an excess verdict on the part of your insured. But in the Carlson file there was evidence of that, wasn't there?

A Mr. Summers brought that into his report, yes.

Q And another thing you wouldn't want if you're going to gamble is a demand from the policy holder or his attorney that the case should settle.

You had a demand letter from Mr. Carlson that the case should settle, didn't you?

A Yes, from his attorney.

Q Isn't it true, Mr. Brown, that the Carlson case was one of the most dangerous cases you ever had, if you had pursued your denial of coverage, and the Carlsons would have been exposed to excess coverage?

A No, I don't think so at all. Because again, we were going to go to a declaratory action to determine if there was coverage. And if the court said there was, then we would settle the case, as it was done anyway.

Q Isn't it true that you never wanted another [155] Carlson file to exist again?

A That's totally incorrect. That had nothing to do with it. This was a question of coverage.

Q This file was resolved in April or so of 1981, about a month before the Campbell accident, wasn't it?

A Yes, it was resolved about six months after the accident occurred.

Q And within a couple of months after that, you received notice that there was a serious accident in Sardine Canyon involving a death and serious injury, didn't you?

A Ray Summers did, yes.

Q And isn't it true, Mr. Brown, that you didn't want a recommendation in the file by your own claims representative that indicated a recommendation to settle for the limits?

A No, we want all of the facts in the file, both ways. And I think this file clearly demonstrates that. Ray Summers had it in the files. The claim superintendent had it in the file. We want everybody's documentation into the file.

Q Isn't it true, to avoid another file that had been reviewed by home office, and they had to reverse their opinion and settle, you didn't want Mr. Summers [156] ever recommending to pay a policy limit again when you were going to deny coverage?

A That is totally untrue.

Q And isn't it also true that you didn't want anything from defense counsel that would indicate that there should be a payment or settlement or liability to Mr. Campbell?

A That is also untrue.

Q All right. We'll go into that a little more in just a minute. And isn't it true that you wanted, in the Campbell file, evidence that would minimize the adverse evidence against Mr. Campbell?

A We want the total evidence, pro and con, in every case. Just as we had it in the Carlson case.

Q If there hadn't have been those recommendations and that demand by Mr. Fillmore threatening to sue State Farm for bad faith, you would have continued with your declaratory judgment action and denied coverage, wouldn't you, Mr. Brown?

A No, I think if attorney Bennett had come in later and did the same thing that he eventually did on that, we would have gone ahead and probably settled the case. As we did.

Q You certainly wouldn't want Mr. Campbell agreeing, or excuse me, you certainly would want [157] Mr. Campbell to agree with your decision not to settle, wouldn't you?

A That really doesn't have a whole lot to do with it. We're going to try to make the decision based on the facts. The fact that Mr. Campbell agreed on this case, it certainly meant something to us, because we believed him. We thought he was telling the truth, and that's all we ask of folks.

Q And you didn't want, in the Campbell case, any letters from defense counsel indicating an excess exposure, did you?

A If a defense counsel feels that we have that, we want it in the file.

Q There isn't anything in the Campbell file regarding excess exposure, is there?

A I assume that that's correct. But if the defense counsel had felt that way, I would want it in the file.

Q And isn't it true that you wouldn't, and you didn't want in the Campbell file a demand from Mr. Campbell or an attorney representing him that the case be settled?

A That's totally wrong again. We want all of the evidence, all of the information in the file.

Q One of the things we heard in a laborious [158] afternoon as we were reading Mr. Campbell's testimony, but I want to focus on it for a minute, Mr. Campbell talked about when he inquired of Mr. Bennett whether he should hire any other attorney. I'd like you to draw your attention to page 107, line 7.

The question by Mr. Hanni was asked of Mr. Campbell, "And had you been encouraged to retain other counsel if you wanted to do that?"

The answer. "I asked Wendell if he thought I ought to. He says, 'I don't see any need for it.'"

"When did you ask him that?"

"I think one time I asked him, that would be on March the 17th when we met with him. That's the first time we met with him."

"Was that in advance of your deposition?"

"That was when we took my deposition then."

"Did you ever talk to him about that at any other time?"

Mr. Campbell said, "I suspect that that was restated when we met with him the last of August of 1983."

Did you realize, Mr. Brown, that Wendell Bennett was telling Mr. Campbell not to hire his own lawyer?

A No, and I don't think that that's what that [159] says. I think that there were several letters sent out, both by State Farm, and several conferences, but Wendell Bennett indicating that he had the right to get his attorney.

Q So you choose to believe Mr. Bennett over Mr. Campbell; is that what you're saying?

A I choose to believe the U.S. mail and the letters that we had in the file indicating that there was an excess exposure, and he had the right to get counsel if he so wanted to.

Q And in response to the letter you sent, if he chose to, at his own expense, he went in and asked Mr. Bennett if he needed it, and Mr. Bennett said, "I see no need for it."

A I don't think that was in response to the letter. The first letter that was sent that indicated that was in September before that March. I wouldn't think that he'd wait eight or nine months to ask a question on a letter.

Q Did you know that that was the first time that they had met together?

A I have no idea.

Q And do you realize that in this deposition that was the exact topic of discussion, were those letters?

[160] A When he was responding to what we just read? I'm sorry, would you restate that?

Q Did you know that in the deposition he was responding, what we just read was a response to the inquiry regarding the substance of those letters?

A I haven't read the several pages before that, no.

Q Isn't it true that in the Campbell file you wanted to make sure there were self-serving memos and letters to make sure that it would back up your decision of "this is definitely a case of no liability, we are going to trial"?

A I know that we want a full investigation in each file, we want it contained in the file so that we can make the right decision on the case. That's exactly what we do in all circumstances.

Q Isn't it true, during this period of time you were getting pressure by home office to start denying coverage, specifically Manuel Mendoza, to deny coverage, and to try cases, and to try and low ball offers of settlement?

A We have never been asked by anyone in State Farm to ever deny a case that had merit.

Q All right, let's talk about that claim committee report that you said you always want a full [161] investigation, you always want everything just the way you like, or as much information as you can so that you can make an intelligent decision.

Mr. Brown, we've seen this before. Isn't this a claim committee report when you made the decision to defend the Campbell case?

A The decision of the claim committee, after reviewing all of the facts at that particular time that we had, and the presentation by the claim superintendent, was that the insured's driver was not the proximate cause of this accident.

Q Just so we know. Aren't most of the same committee men the ones that signed on denying the Carlson coverage?

A That was not that far away. That is probably true.

Q They're the same ones that, in fact, of the light of defense counsel and Mr. McGlinn, were recommending denying coverage?

A We have claims committee made up from the management people from the Utah section. So to the extent

that they would be available for the claim committee, they would be the same ones.

Q Now, when you made this decision in September of 1981, isn't it true that you had not reviewed the [162] claim file?

A Me, personally, are you talking about?

Q Yes.

A I can't remember if the claim file was present. It probably was present when the claim committee was held, but I would not have personally gone through the claim file at that time, no.

Q And you didn't read any of the adverse witnesses' statements, did you?

A I don't believe there were any adverse witness statements at that, in existence at that time.

Q You didn't read the police statement, either, did you?

A The what?

Q The police statement.

A I don't remember if I read the police statement, but --

Q Do you remember testifying two years ago that you didn't read it? Do you want to look at your testimony?

A I just said I don't recall if I did or not.

Q Well, you said you didn't read it before, now you're saying you don't recall.

A Okay, if you see a difference there, that's fine.

[163] Q You didn't read in the police report where there was three or four adverse witnesses that put the fault on Mr. Campbell? You didn't read that, did you?

A No.

Q You didn't read, or inquire regarding all of the information about the reliability of the police diagrams, the measurements and so forth. You didn't even review the police diagrams, did you?

A I'm not sure if they were in there then or not. But --

Q I'll represent to you that at least the file we now have has them in?

A The claim superintendent is in charge of reviewing the file and making those type of decisions at that time. And I would feel certain that the claim superintendent would have reviewed everything that was in that file at that point. The divisional claim superintendent is not supervising that file.

Q The CLR wasn't in there, was it?

A In the file?

Q At the time you made your decision here on September 9, 1981?

A I would assume that the CLR was in there when that decision was made.

Q Do you remember reviewing it, Mr. Brown?

[164] A I don't think I would have probably reviewed it.

Q All right. Now, isn't it true that you testified two years ago that the claim committee only had the CLR available when it made its decision?

A I don't recall that, no.

Q Okay. Do you have your deposition in front of you?

A No, I don't.

Q Okay, then I'll just have you look over my shoulder, it's page 214. Starting on line 6, "And all you had was a claim committee report upon which you based your decision of no liability; is that correct?"

MR. BELNAP: Which page are you on, counsel?

MR. HUMPHERYS: Page 214.

THE WITNESS: Then I said "That is all that was within the claim committee." The file would have been there with superintendent Noxon as he went through the presentation of what happened in the accident.

Q (BY MR. HUMPHERYS) Okay, let's read a little lower. "Did you read any of the witness statements?"

A "No."

Q "Did you review the investigating officer's report?"

A "We would not have done that at that point, [165] no."

Q "Did you reviewed the transcript of the investigating officer, the recorded statement?"

A The answer is, "No."

Q All right. Now, you agree, Mr. Brown, don't you, that in order to make an informed and reliable evaluation, you need to review evidence on both sides of the issue, don't you?

A We want all of the evidence in any particular file. And I feel that superintendent Noxon had the total amount of evidence that was available at that time, and he presented it as such.

Q And without all of this evidence, and a review of all of the information, you state, "After a careful review of the entire facts." That doesn't sound like you were just reviewing a few facts that were around, Mr. Brown. It says "entire facts." And "a careful review."

Then you state, "The claim committee feels that the insured driver's actions were not a proximate cause of this accident, and we should defend any action brought against our insured."

Isn't it true you didn't have sufficient information to draw that conclusion?

A That decision was made based on the [166] information that we had. In a claim committee our procedure is, if additional information comes in later on, which was the case in this particular case, we could review it at any time in the future.

Q But you didn't, did you?

A Did I not?

Q No claim committee ever reviewed this again until after the trial in the Campbell case; isn't that true?

A The file is continually reviewed by the superintendent that's in charge of the file.

Q There was no further claim committee before the verdict came in, other than this one in front of us that says "defend."

A If nothing changes the superintendent's opinion, then they don't do another claim committee.

Q All right. Now, were you aware that this order here that you issued, to defend this case, was immediately given to Wendell Bennett?

A That is not an order that I issued. That's an opinion of the claim committee, with several hundred years of experience, of claim experience in Utah.

Q Just like in the Carlson case.

A That's correct.

Q Now, is it your testimony that as far as [167] claim management understood, Mr. Summers always was encouraged to pay fair value in his claims?

A We try to encourage everybody that works for us to pay an accurate value of the claim.

Q Excuse me. And as far as you know he did, didn't he?

A I think, as far as what we knew at that time, that he would have been paying a fair value.

Q And you trained him to always pay fair value, didn't you?

A We train all of our people to pay fair and equitable value on a claim, yes.

* * *

[170] * * *

Q Okay, I want to show you now, Mr. Brown, what I've previously given to counsel, and it relates to a [171] PP&R, I call it that loosely. It was actually the development guide, which was the predecessor to the PP&R.

Now, before I go further, you knew, didn't you, that Mr. Summers was a very excellent negotiator. You knew that, didn't you?

A When I came into the office in Ogden in 1977, I was told that by his prior superintendent, which was Wayne Ballantyne.

Q You found the same, though, didn't you?

A I really wasn't around -- I had thought that, yes, at that time.

Q All right. Let me give you now this evaluation that was performed, and I'll put it up on the screen so the jury can read along with us. The first page, it's a development guide. This is the predecessor to the PP&Rs, right?

A Yes, this was in 1976, before I got there.

Q All right. Now, it talks about how Mr. Summers, it gives an evaluation, and there's some pretty glowing reports, here, about him?

A Yes, Mr. Ballantyne did this.

Q All right. And here it's signed by Wayne Ballantyne, signed by -- Do you know who this signature is here? Second signature?

[172] A That looks like Ray Summers.

Q And the third signature?

A Wayne Ballantyne.

Q And what's the signature at the bottom? That's a tough one.

A Well, I happen to know that's A. T. Phillips.

Q Okay. A. T. Phillips.

MR. BELNAP: It looks like scribbling.

Q (BY MR. HUMPHERYS) He was the division manager, wasn't he?

A No, he was the divisional claim superintendent.

Q Okay, so you replaced him?

A No. Yeah, I replaced him as divisional claim superintendent, I'm sorry.

Q All right.

A When I first came here I didn't replace him, no.

Q Now let's go to the summary that all of these individuals signed about Mr. Summers. Now let's see if Mr. Summers always paid fair value. "Mr. Summers is a very capable negotiator. His settlements are excellent. He recently settled a case with approximately $7,000 in specials for less than $8,000. This was a case of liability about 85 to 90 percent against us.

[173] "Mr. Summers runs excellent investigations in depth on serious cases."

Mr. Brown, isn't it true that State Farm knew, when they wanted someone to settle a case for less than fair value, it was Mr. Summers they sent out to do it?

A No, that's not true. We don't want anybody to sit there and pay less than fair value in a case.

Q And isn't it true that State Farm, and all of its management, was endorsing and encouraging this kind of low ball settlement?

A Absolutely not.

Q All right. I'm glad you said that, because now we're going to look at something you were involved in. Would you please turn to the Miller case that you have just, the Miller-Shoop case.

A I don't have that case in front of me.

Q Okay, I'll give you a copy. It's right in front of you on the looseleaf.

MR. HUMPHERYS: And Your Honor, here is a courtesy copy.

Q (BY MR. HUMPHERYS) Do you have that? You spent quite a bit of time this morning talking about it. I want to cover a couple of points. Obviously it took an hour to cover the Carlson file this morning. I can't [174] do that with all ten cases you've talked about. But I'm going to cover enough about some of them to know what really happened.

MR. BELNAP: Your Honor, I'd move to strike counsel's comments as editorial, and not a question.

THE COURT: Motion granted.

Q (BY MR. HUMPHERYS) All right. Would you please turn to the first page of that?

MR. BELNAP: Can you give me just a second, please?

MR. HUMPHERYS: Sure.

Q (BY MR. HUMPHERYS) This is the CLR prepared by Ray Summers. Do you see that?

A The facing sheet, okay, yeah, I'm sorry.

Q Just briefly, I want to talk about those who were injured. Very tragic accident. Marsha Shoop had multiple internal injuries, it says fractured pelvis, but in another sheet it said a crushed pelvis. Lumbosacral spine injury, that means the low back, right?

A Yes.

Q Ribs, legs, skull. She even had a fractured skull, didn't she? Very serious injury. And she also had a splenectomy, as well, didn't she? That means because of the injury to her spleen they had to remove [175] it.

A I missed that, I guess. Where are you pointing to?

Q Well, it's on another sheet. It's the one you looked on this morning. I thought maybe you remembered that, since you said you were familiar with the file.

Troy Shoop, multiple lacerations, abrasions, contusions, minor concussion. Nannette Shoop, fractured legs, possible sacral and rib fractures, concussion. Chad, multiple abrasions, contusions lacerations, internal injuries. And then finally, Melinda was killed in the accident.

So we have, again, just like the Carlson case, five very serious claimants with one death. All right, now, I want you to turn to page 7 of that report, which is the next page in your exhibit. Do you see where Ray Summers in his report to you, you see that? William S. Brown at the top?

A Yes.

Q All right. I just want to make sure we know who we're talking about. Ray Summers is writing this CLR to you. It says, starting right here, toward the bottom of the paragraph, "It would appear at this point that we may very well be confronted with policy limits, [176] which, as I assume, may be 15/30/10." Let's make sure we know what 15/30/10 means. That means $15,000, right, per person, per accident?

A For any one individual, yes.

Q Any one individual. Okay. Or a total of $30,000 for everyone in one accident.

A For all, yes.

Q For all. So that means that if there are multiples, such as what occurred in this case, five people either died or seriously injured, $30,000 would apply, and they would have to share it all among themselves, right?

A That would be correct.

Q The ten refers to property damage, does it not? That means that's the limit for payment of damage to the cars, or other kinds of property items.

A Yes.

Q Okay. So now that we know what it means, so Mr. Summers now is telling you in his report that this is clearly a limits case of $30,000. Would you agree with that? That that's what he's telling you?

A He said, "It would appear at this point that we may very well be confronted with policy limits."

Q You agreed with that, too, didn't you? You wrote him down and said, "I agree with your analysis." [177] Do you remember doing that?

A I very well could have. Do you have a date on that?

Q Sure. It looks like it's March 13, 1978, and it's from you to Mr. Summers.

A March 13?

Q March 23. Or, excuse me, 13, that's right. Now, I'm going to come back to this in a minute, but I want to make a point, first.

Here in the second full paragraph it says, "I agree with your preliminary evaluation of this case." You complimenting him on having a very good, comprehensive CLR. I'll come back in a minute regarding the alcohol and regarding your suggestion that he fell asleep instead of was drunk.

Now, there are the various requests for authority where he outlines their medical expenses, and if you add them all up, their medical expenses just to that point nearly exceeded their policy limits, didn't they?

A I'm sorry, I'm not looking at what you're looking at.

Q Okay. Are you in my exhibit, or are you in the --

A I'm in both.

[178] Q I'm looking at this.

A You're talking about the following one in yours?

Q Yes.

A Okay.

Q These sheets were the request for authority by Mr. Summers, and it outlines all of the expenses, the out-of-pocket and special damages. For example, this one was $16,200, not counting general damages, future medicals, or anything like that. Very serious, wasn't it?

A Yes.

Q All right. And I won't go into the others. You, likewise, sent another memo and gave authority for Mr. Burton, excuse me, for Mr. Summers to settle the case. Do you remember doing that?

A Yes. And I replied to him on the 4th of April and extended $30,000 authority, or total policy limits.

Q Let's put that up so we have no question about it. You indicate that he has $30,000 authority.

A You must be looking at a different one than I am, here.

Q I am, sorry. I'm looking at the wrong one on that one. Hold on just a minute. I'll come back to [179] that one. There we go. Now, let's see if that doesn't do it. Okay, the first paragraph indicates that you are extending a total of $30,000 authority, and then you put a BPS, BPS to AS. That's A. T. Phillips, isn't it?

A Yes.

Q You said, "This will confirm our telephone conversation of April 3rd, wherein these injuries were discussed and $30,000 authority was extended."

Now, Mr. Brown, isn't it true that those injuries were worth well in excess of $30,000?

A The total amount of the injuries?

Q Yes.

A I believe they were, yes.

Q Who did you send to go settle this case? Mr. Summers, wasn't it?

A I think I asked him in that same memo to have these -- Let me go back to the April 4th memo.

Q Well, let me just have you turn to a letter addressed to Strong and Hanni law firm, dated July 26, 1978, a couple of months, almost three months after you had extended authority. Let's read together that first paragraph. And this is addressed to Mr. Bullock, who was one of the attorneys at Strong and Hanni.

"Your 7-19-78 letter has been received and reviewed. Please be advised that we will be negotiating [180] with attorney Sorenson," he's the one representing the injured people, right? Isn't that right, Mr. Brown?

A Yes, uh-huh.

Q "That we will be negotiating with attorney Sorenson for an amount less than the policy limits." Mr. Brown, why are you sending Mr. Summers to negotiate a claim for less than policy limits, when you knew it was worth far more?

A Counselor, I would have to read the memos around that date to try to see what questions were brought up on that. He was extended, Ray was extended the coverage immediately on the $30,000 on there, and he was told to get in touch with, or I gave him the permission to get in touch with Glenn Hanni to see if he'd have one of his people just handle the court-approved settlement for us. As far as I was concerned, at that point I was giving him the full limits authority.

Q And you sent your most capable negotiator that you knew could settle the case for less, didn't you?

A Absolutely not. I certainly wouldn't characterize Mr. Summers as being our most capable negotiator. And plus the fact --

Q But he was certainly one that could settle a [181] case for less than fair value, wasn't he?

A We paid $30,000 limits on this case.

Q But it was only because you couldn't negotiate something less, isn't it?

A I don't recall him negotiating, or trying to negotiate anything less.

Q Didn't you just tell Mr. Bullock that you were going to try to settle it for less than policy limits?

A Again, I would have to go back and read. What was around that area? You're looking at one document, there. I

know before that I gave him the authority to settle it for $30,000, and he was told to get in touch with the Hanni law firm to get the settlements going on it.

Q Mr. Summers testified that one of the things that he was required to do at State Farm was to try and settle a case for less than fair value, and when he was given authority, he was then instructed to try and settle it for less than authority. Isn't that just what you said to Mr. Bullock in that letter?

A Again, I know that when I've given authority on these cases, it's up to the claim rep to try to settle the case for that authority. And what I'm talking about, when I say within authority, you know, [182] that could be the $30,000. And that's what I feel like that he probably should have gone out and settled with on this case.

Q Then why did you tell Mr. Bullock he was going to go out and settle it for less?

A I would have to look at the other documents around that period of time. I don't know what's there.

Q Let's look also how competent and capable Mr. Summers was in settling other kinds of claims. In this same case he was also sent out to try and settle the PIP claim, wasn't he? The PIP claim?

A I believe that we had extended him PIP authority, yes.

Q All right. Now, for some reason I don't have the overhead on this, but if you'll turn to the second to the last page in the exhibit. It's a payee worksheet. Do you see that?

A You say it's in here?

Q Yes, second to the last page. Isn't that one of State Farm's work sheets to determine how much is owing for lost salary or loss of income?

A Yes.

Q And this is Ray Summers' handwriting, isn't it?

A Yes, it is.

[183] Q Do you see there on the bottom, or toward the bottom, where he indicates how much he has computed as the amount of lost income, $1,193.40?

A That's the payment he made, yes. So he was expecting more.

Q Let's look at what he offered. Based on his own figures, it was worth more than $1,000, Mr. Brown. But here he is offering $1,000 to settle that claim. Isn't it true you knew Mr. Summers would go out and settle claims for less than fair value?

A I'm sorry, you've got me lost on here.

Q Read the first paragraph. This is Mr. Sorenson, who is the attorney representing the claimants. Right? A letter addressed to Ray Summers, "Dear Ray. Pursuant to your telephone conversation to me relative to your authority of $1,000 for Nannette Shoop, please be advised that I reject your offer of $1,000 based upon the following computations."

He then indicates how he's computed his lost earnings. So Mr. Summers has just offered $1,000 on a claim he knows is worth more, didn't he?

A I'm sorry, the first thing I was looking at on here, it said he made the payment for $1,193.40.

Q That's right. He did. Because the claimant rejected it and would not allow a compromise settlement.

[184] A That was the form, you've just been looking at it. You said his evaluation was $1,193.40, and that he paid $1,193.40.

Q He finally paid $1,193.40. But he didn't even offer fair value at the beginning, did he? Do you believe there's a range of value, Mr. Brown, on lost income that is easily computable?

A If the lost wages are clear, and there's no question as to a person's employment, normally that's the case.

Q Now, Mr. Summers also testified in this case that you, as I remember, he testified that you told him to downplay the alcohol, and to suggest something that would indicate that he was not drunk.

Mr. Belnap and you read a portion of this. I would like to read what was not highlighted by Mr. Belnap. After talking about the beers and how a couple of beers would not equate to .15, then you indicated, asking him to go out, perhaps to the places where he was drinking the beers, and then you said, "The only explanation that I can see for this accident would be that Miller went to sleep and crossed the center line."

Mr. Brown, Mr. Summers gave that very testimony, that you were trying to get him to use the [185] falling asleep defense instead of the alcohol defense. Do you remember that?

A Counselor, you've got total liability on it if he goes to sleep and crosses the center line. I think what Mr. Summers said in that case, if I recall, is that we told him to not bring up anything on drinking in this thing.

Q That's right. To minimize it?

A And we certainly did.

Q To minimize it. Didn't he?

A We're telling him that he's perhaps drunker than he'd even indicated that he was, here. We're not trying to minimize anything on this thing. We're not trying to minimize liability. We're saying --

His story was, if I recall this thing, his story was that we were to say that he had some kind of a physical illness so that we wouldn't have to pay it. We weren't alleging that. We were saying, "I agree, he went to sleep. We're liable for this."

Q I think that was a different case, but we'll look at that one, too. Mr. Brown, what I'm talking about, I'm not sure whether it was you or someone else, but isn't it true that when someone is drinking it has a tendency to increase the amount of damages that a lawyer -- It wasn't you, it was Mr. Nebeker. He said [186] that when someone is drinking it has a tendency to aggravate a jury and they would award more money. Isn't that true?

A Not beyond policy limits, and that's what we paid.

Q But isn't it true that you hadn't paid any policy limits as of this time, had you?

A No, but I think that was clearly what was going to happen. We gave him the total, if I recall the dates right, it was like a week or so later that we gave him the total $30,000 authority.

Q You were asking him to minimize the drinking and play up perhaps he went to sleep, so that there wouldn't be as much of a chance to pay the policy limits.

A I was saying he's worse, as far as the drinking, on that. I think anybody can read that and say I was disagreeing. He didn't have just a couple of beers. He couldn't have done that with a .15. That showed that he was legally drunk.

Q Didn't you say that, "The only explanation that I can see for this would be that Miller went to sleep and crossed the center line"? That didn't say the only explanation if he wasn't drunk, it says, "The only explanation I can see."

[187] A I think the drinking certainly would contribute to somebody falling to sleep, and we have accidents that appear every day with that. I wasn't trying to minimize anything.

Q You were aware, were you not, Mr. Brown, that Ray Summers had been phoneying up documents for at least fifteen years before you finally let him go?

A No, I don't --

Q You knew that, didn't you?

A I don't recall being aware of it, no.

Q Do you recall that Marilyn Paulsen addressed it with management?

A When is it? I'm sorry, when is this you're talking about?

Q Weren't you involved in the Summers versus State Farm case?

A Yes.

Q You were a witness in that case? At least you were deposed? It never went to trial.

A I was deposed, yes.

Q And you were heavily involved as the superintendent, the divisional superintendent, weren't you?

A Yes. For a while.

Q You knew about what evidence was coming out [188] or not coming out in that case, weren't you?

A I was aware of some of it, yes.

Q Remember what Marilyn Paulsen said? Now, we've heard what she said in this case, that it was good business when she reported the fact that Mr. Summers had been phoneying up documents in a claim file. She was told to mind her own business because it was good claims business.

I'd like to now refer to her deposition back in the early eighties, page 86. They were talking about the fact that she was aware that there were phony documents and other falsifications, that she felt awkward, she had reported it, and she says on line 11, "The best I can recall, it was related to me that this was perfectly all right, this was acceptable claims handling, and not to be upset."

Do you remember hearing that back in the early eighties, Mr. Brown, from your own employee that's still employed?

A In the early eighties?

Q Yes. When her deposition was taken. Do you want to know the exact date?

A Well --

Q It was the 29th day of December, 1983.

A I'm sorry, your question, again, was what?

[189] Q Were you aware that she had reported the falsification of documents to her superintendent, and her superintendent told her not to be upset, that it was perfectly all right, and that it was acceptable claims handling?

A You said she said this in 1983?

Q Yes, this is her deposition in 1983.

MR. BELNAP: By way of foundation, I'd like to make a foundational objection in terms of whether this is the report of one event to Mr. Ballantyne, or multiple events. That's not --

MR. HUMPHERYS: That's cross examination.

MR. BELNAP: Your Honor, that's not clear from the question. Counsel was indicating multiple events.

THE COURT: Well, clarify the question. I sustain the objection.

Q (BY MR. HUMPHERYS) You recall his testimony, first of all, Mr. Brown?

A Vaguely. I'd have to read the pages before to see what the questions were on that.

Q Wasn't something like this important to you as a divisional claim superintendent? You said no one ever falsifies documents in your claim files. And you don't even remember this testimony?

[190] A I said nobody ever falsified documents in claim files.

Q Wasn't that your prior testimony?

A I don't believe that is, no.

Q Oh, do your employees falsify documents in claim files?

A I think Ray Summers did on a case or two, yes. Or several cases. But I don't think that we were aware of all those, no.

Q Okay. But you were aware as of 1983 that Marilyn Paulsen had reported it to management?

A In December of 1983?

Q Right.

A That would probably be correct, yes.

Q And what did you do about that? Did you try and correct this statement to Ms. Paulsen, that it wasn't good claims practices?

A I think her testimony of this was that Ray Summers was the only one that was doing that, and Ray Summers was no longer with our company in December of 1983.

Q But your management was saying it was perfectly proper?

A The problem was gone there. I'm sorry --

Q But your claim management was saying that it [191] was perfectly proper.

A Duane Ballantyne was no longer in claim management, either. But no, our claim management never thought it was proper as far as I'm concerned. Wayne Ballantyne, if he said that, we didn't see what was said before that. But if he said that, I think it would have been totally incorrect. And I think that anybody else that's in State Farm management would say the same thing. It wouldn't be a thing we would teach, and it's just wrong.

Q Let me make sure we clarify. This was referring to a conversation that she had had in the early seventies with Mr. Ballantyne when she was aware that Mr. Summers had been falsifying documents in claim files that she reported to Mr. Ballantyne, and he said what we just read.

Does that refresh your memory at all?

A I recall there was some kind of a case, but I don't remember the exact -- I don't know what she was talking about before that, what kind of documents, what kind of circumstance.

Q Would it make any difference to you?

A Was it one document? Was it -- Well, you said that we were aware for fifteen years or something that -- No, I wasn't aware for fifteen years that Ray [192] was falsifying documents.

Q All right, now, let's now look at a memo, this is from Marilyn Paulsen, this is, again, one of the exhibits in the Summers versus State Farm case. "To Tom," is that Tom McGlinn?

A I'm sure it would have been.

Q The date, 7-17-80. This isn't 1986, is it? But 1980?

A Yes, that would have been Tom McGlinn would have been her superintendent at that point.

Q All right. Let's read the last paragraph. "I am aware, and have been for a long time, that Ray phonies up a lot of his documents, and probably it doesn't cost the company anything more, his phony wage and salary verification report is probably in the neighborhood of the right amount, according to what Mr. Croshaw must have told him, and I guess he figures it just saves time and trouble for him."

Weren't you aware, back in 1980, two years before Mr. Summers was forced into retirement, that for years he had been phoneying and falsifying documents?

A I think Mr. McGlinn checked into that at that time, and then wrote Mr. Summers back, the best I recall. This is Monsanto Chemical case? Is that the one? Yes. And told him that it certainly was not [193] acceptable for anyone to falsify documents, and that if he did it in the future that it would be possible terms for termination.

Q Mr. Brown, wasn't it reported to you that Ms. Paulsen had known for years that he had been falsifying documents?

A I did not take that as anything with a real negative way, the way she was putting that, there. I think that she has since clarified that, in fact, and thinks she did to Tom

McGlinn, she really just knew of one instance, but she had had suspicions as to other cases.

Q You were aware of this, weren't you, back at the time, in 1980?

A I think Ray denied doing any of those things.

Q He did?

A Back in 1980.

Q Isn't it true, Mr. Brown, that he was beginning to resist the dishonest things that he was being requested to do, that's the reason you turned on him and forced him out of the company?

A That is absolutely untrue, because we have never encouraged anyone to do anything dishonest as long as I've been at this company. And we never will. If it changed, I'd leave the company.

[194] Q If you say that, why is it that Marilyn Paulsen was told that doing this very thing that you said you would immediately terminate someone for, was good business?

A I didn't say I'd immediately terminate them for one instance of doing something like that. I said before, I would not agree with Ballantyne if he said that.

* * *

Q (BY MR. HUMPHERYS) Mr. Brown, we're going to cover this a little later. Let me ask you your testimony, is it your testimony that State Farm has never tried to profit out of any of the deceitful acts done by Mr. Summers?

[195] A That State Farm has ever tried to profit from Summers' acts?

Q Yes.

A I'm not aware of any, no.

Q Isn't it true that while you were divisional claim superintendent, that there were people suing State Farm on the grounds that Summers had misrepresented and obtained a release from them based on misrepresentations and fraud?

A I think that there were some cases, yes, they brought up, and that they were trying to apparently break a release that Ray had taken from them.

Q And isn't it true that, under your direction, Mr. Brown, while you were divisional superintendent, that State Farm took the position that those releases were valid, and tried to enforce them against the claimants?

A I don't recall that. I don't recall that -- I thought they had been reopened. The ones that I can remember.

Q Do you recall Mr. Bennett moving for summary judgment on the releases, claiming that they were binding and valid, and that the party had no further relief and could not make any further claim?

A No, I don't remember that. I'm not saying it [196] didn't happen. I'm saying I don't remember that.

Q And isn't it also true, Mr. Brown, that if that had succeeded, State Farm would have saved a lot of money?

A I'm not familiar with this case. I don't know what you're talking about on it.

Q There are multiple cases, aren't there, regarding deceptive releases being obtained where State Farm was sued?

A I recall that there was some suggestion that there might have been four or five cases where he, either we broke, I think we broke the release and went ahead and paid the case.

Q But only after you had tried to enforce the release, isn't it?

A I'm sure that, if we did any of that at that time, I don't recall the exact cases on there, but it would have been according to Ray Summers' testimony. If he said that everything was proper and above board, we might have proceeded that way until we found out enough about the facts to change our mind.

Q Mr. Brown, isn't it true that Mr. Summers has testified, here, that he was instructed by State Farm to go obtain a release, and to misrepresent that the release would not apply to future claims, and then when [197] future claims were made, State Farm would stand on the release and not pay any more? He testified that here, didn't he?

A You're representing that he did, is that what you're saying?

Q Didn't you read his testimony? I thought you did.

A In this trial?

Q Yes.

A I haven't read all of his testimony.

Q Oh, you haven't? Okay, I'll represent to you that that's what he said.

A If he said that, I disagree with that.

Q Isn't that exactly --

A We've never told him to do that.

Q Isn't that exactly what has happened in those cases that you've just referred to?

A I would say in those cases it would go the opposite way. We would have reopened those cases and paid those cases.

Q Isn't it true that you moved for summary judgment in those cases, trying to get the court to enforce the release and throw out the claims against your State Farm coverages?

A That could have been done at the initial [198] stage of something, but once we would have found out the truth on it, or suspected the truth on it, then we would have paid them.

Q A couple of years later?

A I don't know what cases you're talking about. I have no idea the timing of any of the settlements.

Q Isn't it true that in those cases you would fight for years before you would finally settle?

A Absolutely not. If we found out the truth we'd want to take care of it as soon as possible.

Q All right. Back in 1980, we just saw a memo from Marilyn Paulsen regarding all of the falsifications. You have been, you claim to have been talking to Mr. Summers about his deceitful practices, and that you were putting him on probation clear back in the early eighties; '81, isn't it?

A Mr. McGlinn would have been talking to him, because he was his boss.

Q And yet, isn't it true that many of those you didn't settle for years after that?

A I'm sorry, which cases are you talking about that we didn't settle?

Q We'll get into them in a minute. Counsel wants to review it. I want to talk about some of the other files that you discussed this morning. Let me [199] just cover the Gross file. The Gross file, which I understand from you that you thought nothing was done improperly, and that the same amount would have applied in both Idaho or Utah, regardless of the law that applied; is that what you said?

A I said the end result would have been the same, if you look at the assumption of risk defense on it, I believe it's the same one we're talking about.

MR. BELNAP: Is this Goss?

MR. HUMPHERYS: Goss. Did I say Goss or Gross? Goss. G-O-S-S.

Q (BY MR. HUMPHERYS) All right. Isn't it true that the people were from Utah, and they got in an accident in Idaho? Correct?

A Yes.

Q And in Utah they had what is called a guest statute. Do you remember that?

A That's correct.

Q That means if I'm a passenger riding with someone else, and that person is negligent, I cannot sue because the law won't let me; isn't that right?

A And I can't remember if gross negligence was a part of that act, or not at that time.

Q But generally speaking, a passenger couldn't sue his own driver, could he?

[200] MR. BELNAP: Your Honor, I'm going to object for lack of foundation with this witness in terms of the law. The statute ought to be able to be shown to him to help with issues that dealt with issues of intoxication in that statute also.

MR. HUMPHERYS: I'm asking for his understanding to lay foundation.

MR. BELNAP: While I'm up, Judge, we have a witness out here. May I just walk out the door and tell him it does not appear we're going to get to him?

THE COURT: You may. Why don't we just take a stretch break for the last few minutes.

Q (BY MR. HUMPHERYS) You have rendered an opinion that whether Idaho law was applied or Utah law would apply, the end result would be the same; isn't that what your opinion was?

A Due to the assumption of risk doctrine, yes.

Q All right, I want to cover some of the points with you in that regard. Isn't it true that the guest statute which prohibited a driver from suing applied in Utah, but didn't apply in Idaho?

A I don't recall Idaho having a guest statute.

Q One big difference is the guest statute. Let's talk about the assumption of the risk. Assumption of the risk is really just a form of negligence, isn't [201] it?

A Yes.

Q And Utah had a comparative negligence statute, I'll just abbreviate it, where if a claimant was 50 percent or greater at fault, he recovers nothing; isn't that right?

A Yes, that's correct.

Q What was the comparative fault statute in Idaho, Mr. Brown?

A I can't remember back in those years.

Q Did you know it was pure comparative negligence?

A No, I didn't.

Q Explain to the jury what pure comparative negligence is, versus the Utah law of 50 percent?

A Okay, do you have that law with you so we can look at it?

Q Just go ahead and explain it in general terms.

A A pure comparative negligence is a case where a person can sue another person, or collect from another person, based on the other person's negligence.

Q Okay. And you're not restricted by the 50 percent, are you, in a pure comparative negligence?

A In a pure comparative negligence state, I [202] don't believe you are, no.

Q All right, so let's put that in context. If I were 10 percent, no, if I were 60 percent at fault in an accident, under pure comparative negligence, I would still be able to recover 40 percent. Because I was 60 percent, I can't recover for my fault, but I can recover for the balance, right?

A That would be correct, if that were the case.

Q But if I were in Utah and I were at 60 percent, I still get zero, don't I?

A Yes.

Q Isn't it true, Mr. Brown, that by not applying Idaho law where that accident took place, you took advantage of those claimants and told them they were not entitled to liability benefits under Utah law?

* * *

[204] * * *

A To respond to your question, no, we were not intending to try to cheat anybody. If there was a mistake made, it could have been a mistake on my part on that. I did not know that they had a pure comparative negligence law at that time. If that were the case. And I still don't know if there was anything that would change that, as far as assumption of risk would be concerned.

Q If Idaho had a "greater-than" negligence, that's a little different than Utah, right?

A Yes.

Q That means that even if it's fifty-fifty, he still recovers, correct?

A Right.

Q Now, Mr. Summers testified that, based on his research and under --

A I'm sorry, I'm interpreting that a little bit different. To me the greater-than law would be that your negligence would have to be greater, or less than somebody else's in order to recover.

Q I'm sorry, you're right. I have not applied that correctly. A greater-than negligence would mean that I would have to be 51 percent at fault before I would get nothing? Is that right?

[205] A Well --

Q In other words, fifty-fifty?

A I believe the other side would have to be 51 percent before you would get anything, yes.

Q Well, that would be the fifty-plus.

A Okay.

Q Under a state where it's greater than, if I'm fifty-fifty I still recover 50 percent.

A Okay, we'll -- All right -- It's been a long day.

Q I don't want to belabor the variations of the law. What I would like to point out is this. Isn't it true, Mr. Summers

said, and testified to, that there were advantages under Utah, or excuse me, under Idaho law, where the accident took place, which would have given benefits to the injured people?

A He said that, and he also brought up the assumption of risk doctrine in his closing report. It was a little difficult to read, but he brought it up there, and it was my understanding that he was saying it would be barred under assumption of risk.

Q And he was also -- And you were also talking about the guest statute, weren't you, trying to apply that to bar the claims?

A No. The accident happened in Idaho. Idaho [206] law would prevail.

Q Why is it that you didn't apply Idaho law, then, Mr. Brown? You just said you didn't do that.

A Mr. Humpherys, we thought we were.

Q You thought you were. I thought you just testified this morning that you were applying Utah law, because you didn't think it would make any difference?

A No, I did not. I said assumption of risk law of each state, if it was the same law, would preclude the recovery. We couldn't apply Utah law on an accident that occurred in Idaho.

Q Well, I'm not sure we need to go through all of these. I would sure love to, but I'm not sure the time is worth it.

Let me cover the Tew case, because you stated this morning, and counsel, your counsel, Mr. Belnap represented that Summers' testimony was that Mr. Tew was deprived of benefits. And then --

MR. BELNAP: Can I?

MR. HUMPHERYS: Go ahead, please.

Q (BY MR. HUMPHERYS) And then he said, was that true, and was he honest when he said that Mr. Tew was deprived of benefits? Do you recall me objecting that that was not an accurate representation of Mr. Summers' testimony?

[207] A Yes, I do.

Q Do you recall Mr. Belnap saying that I was absolutely wrong when I said that he testified that he did get benefits, but he had to fight for it?

A I remember your conversations.

Q All right, now, let's read the whole thing, and let's see who was misrepresenting. On line 18, which is what Mr. Belnap referred to, of Mr. Summers' testimony on page 258, Mr. Summers said, after referring to him, "But Mr. Tew was deprived of any benefits," but there was a comma there that Mr. Belnap didn't continue to read.

MR. BELNAP: Are you reading from his trial transcript?

MR. HUMPHERYS: Trial transcript, page 258.

MR. BELNAP: 258 or 248?

MR. HUMPHERYS: Mine is 258, but it may not be the same as yours. I'll read on this, you're welcome to look over my shoulder.

MR. BELNAP: Let me just find where you are first, please. Okay, mine is on 247.

MR. HUMPHERYS: The page numbers may not match, but the testimony should.

Q (BY MR. HUMPHERYS) But Mr. Tew was deprived of any benefits, told to seek his recovery from the [208] vehicle, the coverages that were on the vehicle that was involved, because there was primary and responsible. Then he said, "I expressed to superintendent, whom I believe was Tom McGlinn, that that was wrong, because there was -- "

A That this was wrong?

Q Mine says that was wrong. We may have a little bit of a discrepancy in the transcript. But either way, it means the same.

That this was wrong, I'll read it the way you have it, Mr. Belnap. "Because there were horrendous bills that were already accumulated, and that the liability coverage on the

southbound vehicle was adequate to take care, or was inadequate to take care. Nevertheless, don't offer it, don't even infer availability of those coverages."

Now, I'd like to focus your attention on the following testimony. "I had known Mr. Tew for years, and I went to him and I said, 'I'm sorry I can't offer you the benefits unless I have a written demand from you.'

"He said, 'Why? I'm a policy holder.'

"I said, 'Well, I've got to have that before they'll have any authority.'

"He then provided me with a written request [209] for medical benefits, and death benefits under the provisions of his own policy. This was still resisted, in that I was not permitted to give him any loss of income allowance for him or his wife, nor was I permitted to give him any loss of service allowance for himself or his wife. Both of which were still either hospitalized or under physician's care."

Question. "Did he ultimately have to threaten litigation?"

Answer. "He threatened a complaint to the Utah insurance commissioner and threatened to bring suit. He had an associate counsel, I believe, initiate the proceedings of a legal action."

And then my question was, "And then eventually did State Farm pay it?"

Answer. "Yes, they finally broke loose and paid that which he was entitled to from the onset."

Now, Mr. Brown, you've been representing a lot of things to this jury. It was not true when you represented that Mr. Summers testified that Tews did not get any benefits. That was incorrect, wasn't it?

A That he didn't get any benefits?

Q That's what you represented this morning when I objected.

MR. BELNAP: That was absolutely not his [210] testimony, Your Honor. That's a misrepresentation. Benefits were paid. If I remember the case, the accident was in November, and benefits were paid in December.

MR. HUMPHERYS: Your Honor, there's no question. That's not the issue. The issue was this morning Mr. Belnap said, "And Mr. Summers testified that they did not get any benefits?" And then he said, "Was that true, Mr. Brown?"

And Mr. Brown says, "No, we paid benefits." And that isn't what Mr. Summers testified. And I'm clearing that up right now.

THE COURT: All right, well, I'll overrule the objection. If it turns out that what Mr. Belnap has said is vindicated by the record, then I'll allow you to bring that to the jury's attention on Tuesday morning.

MR. BELNAP: Please, Your Honor. Thank you.

Q (BY MR. HUMPHERYS) Isn't it true, Mr. Brown, Mr. Summers' testimony was he had to fight to have the benefits paid? Or words to that effect?

A Part of his testimony was that.

Q But he did say that eventually they were paid.

A Yes.

Q And isn't it true that he also testified that [211] they were clearly owing from the beginning, but there had to be a threat before State Farm would finally pay?

A Well, I would state to you there, sir, that this would indicate, if you listen to Ray Summers on here, that he's talking about a considerable period of time between when the accident occurred and when he finally forced State Farm to make a payment. And I would submit that two weeks is not something that, where you would say that somebody had to force somebody to do it, and there was nothing in the file indicating that he had to force State Farm to do anything. We set up a reserve immediately and he paid within three weeks.

Q Some benefits, right?

A All of them that were due.

Q Okay. Do you recall there were some amounts that Mr. Tew had to go seek claim against the other carrier before it would be paid?

A We paid the limits for Mr. Tew's medical.

Q Okay, what about the others? What about the lost income which you talked about?

A We paid Mr. Tew's lost income.

Q All of it?

A Up to the limits, I guess. I don't know exactly how much there were.

Q Loss of household services?

[212] A We paid services to Mr. Tew.

Q And when were they paid?

A They were paid all along. We started paying services to Mr. Tew on the 18th of December, right after the accident occurred on November the 25th.

Q And Mr. Summers was talking about how he was getting resistance to pay something that was clear.

A There's nothing in this file to indicate he's getting any resistance.

Q Were you involved in the file, Mr. Brown?

A In 1981? Was I supervising the file?

Q Yes.

A No. Mr. Noxon was actually supervising the file.

Q Were you involved to know what was going on with Mr. Summers?

A No, I read the file. Are you talking about in the file?

Q I'm asking you if you were.

A In the file.

Q In 1981?

A In this file?

Q Yes.

A No, Mr. Noxon was.

Q How can you come in here and testify, [213] Mr. Brown, of what was going on with Mr. Summers, and what he was being instructed to do, when you were not even involved in the file?

A I said the file did not reflect anything saying that anybody was resisting anything, and he was making payments in three weeks. That wouldn't indicate any resistance. The authority was given in the file.

Q Now, you mentioned in the Holdridge case that there was absolutely no evidence in the file that the claimant who was an old lady paid Medicare. Do you remember saying that this morning? I wrote it down --

A That Medicare didn't pay anything?

Q Yes, you said there was no mention in the file. No evidence in the file that Medicare paid.

A There were some indications that Medicare was involved. We had nothing in the file to indicate if Medicare paid an amount of money, I don't think.

Q You don't remember seeing in the file where there was mention of the fact that, in fact, they did pay substantial amounts of this old lady's bills? Remember seeing that in the file?

A She went into a nursing home and Medicare was paying a nursing home.

Q So there was evidence in the file that Medicare was paying, wasn't there?

[214] A There wasn't any evidence in there that it was because of the accident. There was a lot of evidence, or at least Ray said in the file that he was having a very difficult time in this case trying to determine what was due to natural aging of this lady and what was caused by the accident. And he paid medical for this lady.

Q I just, this morning, if I remember your testimony, you said there was no evidence that there was any payment of Medicare expenses, but now you're saying that there is evidence of expenses paid by Medicare.

MR. BELNAP: Can I have the record state the same objection, that that misstates his testimony, and I'll wait to have my chance to clear it up. It was the allegation of Mr. Summers that State Farm forced Medicare, or backed off and made them pay first in another fashion.

THE COURT: You may, Mr. Belnap.

MR. BELNAP: Thank you.

MR. HUMPHERYS: All right, thank you.

Q (BY MR. HUMPHERYS) Isn't it true that State Farm resisted -- Well, let me back up. You understand the law, that if Medicare pays a medical expense, that they have a lien against any recovery. You understand that, don't you?

[215] A They do now, I think, in some states. I don't know the law exactly then. I can't recall.

Q They had a subrogation right, which meant they could go against State Farm and recover those expenses, didn't they?

A I don't know.

Q And isn't it true that Medicare tried to recover? Or do you know?

A I can't recall any particular case.

Q Isn't it true that when you settled with this older lady for a small amount, that she was then subjecting herself to the subrogation claimed by Medicare to come in and take all of her recovery away?

MR. BELNAP: Your Honor, I'm going to object to counsel's characterizing this in the manner that he wants to. And I can approach the bench if you'd like me to state my objection at the bench.

MR. HUMPHERYS: Your Honor, if he knows, he can say. If he doesn't know, he can say he doesn't know.

MR. BELNAP: It's argumentative, Your Honor. She had counsel, there was a release and a stipulation.

MR. HUMPHERYS: I'm just asking him if he knows it. It's foundational. If he doesn't know it, we'll move on.

[216] THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Do you understand the question?

A She was represented by an attorney in Brigham City who was her son, and I would only hope that her son was adequately representing her interests, and he's the one that made the demand that we paid.

Q Right, I understand that. But now my question is, Mr. Brown, didn't you know at the time you made that settlement for a relatively small amount, that the amounts paid by Medicare, which was far in excess of that, could be used, Medicare could come back against her and assert their subrogation lien and take all of her recovery away?

MR. BELNAP: Your Honor, assumes facts not in evidence, lack of foundation on this testimony about Medicare, for which there's absolutely no foundation.

MR. HUMPHERYS: I'm asking for the foundation. I'm asking if he's aware of it.

MR. BELNAP: Well, there needs to be foundation. There's nothing in the file about it. Where is this information coming from?

THE COURT: I'm going to sustain the objection. Lay the foundation in a fashion that allows --

[217] Q (BY MR. HUMPHERYS) Are you aware that Medicare has a first lien on any recovery on a personal injury?

A I was not aware of what it was at that time.

Q You understand that's the law now?

A That was many years ago. In Utah? Or all over?

Q In Utah or -- Most places.

A It is in Colorado, where I work, I know that. I assume it would be similar.

Q And I'll ask you to assume that it would apply here in Utah, since you say you don't know. If it applied here in Utah at that time, isn't it true that, with that first right of recovery, they could come in and take all of her recovery away by reason of the fact that Medicare paid for medical expenses from the accident?

MR. BELNAP: Your Honor, there's lack of foundation that medical care, that Medicare paid accident-related expenses, as opposed to a nursing home because of her age. There has to be that foundation.

THE COURT: Sustained. Lay the foundation.

Q (BY MR. HUMPHERYS) All right, I'll want you to assume -- Let me ask you this. There was an issue whether or not her nursing home expenses was related to [218] her disability, or whether it was from old age, right?

A I recall some issue.

Q All right. And State Farm took the position that it was not associated with the accident, correct?

A I'm not sure we took any position one way or the other on it.

Q Well, you didn't pay it, did you?

A The nursing home care?

Q Yes.

A I'm not sure it was presented to us.

Q Okay. Do you recall Mr. Summers saying that he thought some of her disability that resulted in the nursing home expenses was from the accident?

A I don't recall off the top of my head. I don't recall.

Q I want you to assume that some of them are. And if that is the case, isn't it true that State Farm would be jeopardizing that recovery for this older lady because of that subrogation lien?

A Sir, she was represented by an attorney who was her son. If he makes a demand on something, I would have to assume that he's protecting his mother, and that he's got some kind of agreement with Medicare to make sure that that wasn't going to happen. I would certainly hope that would be the case, and I would think [219] that we would have assumed that.

Q Let me draw your attention in the Holdridge versus Hadfield file, to a memo -- I don't have a memo of it -- from Mr. McGlinn to Mr. Summers. Since I don't have an overhead I'll just read it with you. You see that? This is the same file, the older lady where the issue was whether the medical expenses should be paid by State Farm or Medicare, and what effect it would have, okay? Are you with me?

A Yes.

Q All right. Let's read what Mr. McGlinn tells Ray Summers on October 10, 1979. "It appears you have excellent control with this lady, and perhaps that is all that will be required. It could be that the claim may be settled for out-of-pocket medical expenses alone." Isn't that consistent with Article 12 of the claim superintendent's manual?

A You'd have to show me what you're talking about in Article 12. Do you have that handy?

Q The jury's seen it. Let me now go to the portion which relates to the Medicare and Medicaid. And this is what Mr. Summers was talking about in a memo June 3, 1980, from Mr. Summers to Mr. McGlinn, he says, "In checking with the providers of the services rendered, I find that the bills have been submitted [220] through Blue Cross Blue Shield for Medicare/Medicaid response, which I have asked for clarification as to the payment or whether or not they intend on subrogation."

Isn't it true that State Farm knew that Medicare, Medicaid, had the right to subrogate, meaning they had a right to go after the recovery from this old lady?

A To me he's saying that he's asked them for clarification to find out if they're going to have any subrogation on it. That's what he says.

Q Now, this is the doctor, you said there was a question whether the nursing home was related to the accident. There was an opinion from Dr. Joseph Nelson, an orthopedic surgeon, dated November 19, 1980, and it talks about her shoulder, which was the primary reason she went into the nursing home. Do you remember that? Let's read -- Go ahead.

A All right.

Q "As to her persisting shoulder problem, I believe it is a result of the injury of August 25, 1978." That was the accident, wasn't it?

A I'm assuming it is. I don't recall the date.

Q Isn't it true that State Farm, despite what Dr. Nelson said, took the position, contrary to what Mr. Summers desired, that her problems with her shoulder [221] was due to aging, and not the accident?

A No, I don't think State Farm took the position. Again, she was represented by her son. I have to assume that he adequately represented his mother on this case. He made the demand, we accepted his demand.

Q Isn't it true that when you were going to request the medical bills, that specifically you said don't -- not you personally, Mr. Noxon -- said, "Don't request the medical records because it would trigger a Medicare claim for subrogation"?

A If that's in the report, there, I don't know.

Q You don't remember reading it?

A No, I don't.

Q Well, let's look at it. July 16, 1981, from Ray Summers to Bob Noxon. This is a closing report. "Please note that the requested documentation paid through Medicare has been waived due to the fact that the claimant's counsel and my personal -- " What is that word?

A I don't know.

Q " -- reticence to request itemization of Medicare payments rendered, as the itemized documentation may stimulate a subrogated interest."

A This is Ray Summers writing to Bob Noxon.

[222] Q That's right, it is.

A And what I got out of that, I don't know, I think he said it's been settled.

Q But it was that they weren't going to get the documents, because they were afraid of a Medicare subrogation lien, right?

A Quite frankly, with Summers' wording, there, I'm not sure what he's saying on that.

Q All right. But at least, in any event, Mr. Brown, you admit that there is plenty of evidence in the file to support Mr. Summers' testimony that State Farm took the position that Medicare should pay for medical expenses which were caused by the accident, instead of State Farm paying for them?

A State Farm paid for those expenses under the medical provisions of its policy, sir. No, I can't agree that we sent them to Medicare.

Q Do you recall the liability portion of the policy settling for far less than policy limits?

A Yes, it did.

Q And the reason why is because Medicare paid for the medical expenses, right?

A The reason why is that's what her son demanded from us, and we paid it.

Q Quickly, the Hansen versus Winn file. This [223] was the case where Mr. Summers testified that they required him to use a bogus defense, a latent defect defense, in order to try and prevent payment on the claim. Do you remember that one?

A This is the one where he said he didn't have photos of the vehicle and they were in the file, yes.

Q I won't argue with you on the photos, they're in the file. Where they came from I don't know. But what he said of substance was that State Farm was requiring him to use the latent defect defense, right? In order to defeat the claim?

A He said that was one of the defenses on the claim.

Q He said that was one of the primary ones. Let's look and see how viable that was. Here is a claim activity log form, I believe this has been in handwriting. Let's see, do you recognize whose this is?

A Whose handwriting?

Q It looks like it's someone other than Mr. Summers.

A Well, the handwriting under that 8-31-79 is Summers.

Q Is that Summers; you can recognize it?

A Yes, I can.

Q This is after he's been investigating the [224] latent defect defense and being told to use it, according to his testimony. Here's what he cites in the file. "Defense possibilities. Latent defect definitely minimal, therefore a condition of negligence exists."

Now, that, doesn't that support his testimony that he found that the latent defect defense was a worthless defense, and it was being asserted without merit?

A To me he said there was a possibility of negligence on our insured because of negligent upkeep of the vehicle. We knew it was.

Q But you took the position formally there was a latent defect so you could avoid responsibility for the accident, didn't you?

A No.

Q Let's look at what else was said in the file. Here, this is your superintendent, Thomas McGlinn, to Richard Walsh, the division superintendent in Las Vegas. Apparently the insured was out of the Nevada area; is that right?

A They were handling the claim by Mr. Eccles, I believe, which I believe was a passenger in the Winn vehicle.

Q Do you see where superintendent Thomas McGlinn says, "We would not have a valid latent defect [225] defense," and it's even admitted in the file?

A Yes, this was early on, in the statement to the claim superintendent out there, he told him to go ahead and handle that under the policy.

Q And yet State Farm continued to use that defense to try and beat the claim down, didn't they?

A We don't try to beat anybody down, sir.

Q All right. Let's look at some more. These are the photographs you put up for a brief moment. Let's read what it says. This is a part of an investigation regarding the, by a mechanic or someone such as that, regarding whether or not there was a latent defect. Do you remember that?

A This is by our estimator in the Logan office, Arch Geddes.

Q And Arch Geddes says, "Ray, no matter what happened to the brakes, after seeing the truck I think it would be very hard to prove that our insured was not guilty of negligent maintenance." Do you see that?

A Yes.

Q And yet State Farm continued to maintain that latent defect defense, didn't they?

A I'm sorry, negligent maintenance is a little different than latent defect.

Q All right, then let's look at some additional [226] memos that are even long after that. This is Mr. McGlinn to Ray Summers, now, regarding, again, that defense that was continued to be asserted.

Starting here, "I see that we do have the possibility of a defense with the mechanical defect." Isn't that demonstrating that Mr. McGlinn is asking Mr. Summers to continue to assert the latent defect defense, even after all of the evidence to the contrary?

A He said, "There's a possibility of latent defect." He didn't say we weren't going to pay a claim because of latent defect.

Q But isn't it true, Mr. Brown, that that was the defense used by State Farm to avoid paying the claim, when it was very clear there was negligence on the part of your own insured?

A I don't know that this claim was avoided down there. This is one I don't recall -- We had no information as to what the outcome was. I know he was represented by an attorney, and you know, I don't think there's too many plaintiff attorneys out there that we're going to beat to death or beat down on the issue of the law. They usually know it.

Q Well, let's look and see how you did. You keep saying you really didn't use that latent defect defense against the claimant. Let's look at it.

[227] "In meeting with claimant counsel -- " This is a memo, or status report, dated March 2, 1981, and this is Mr. Summers to Mr. McGlinn. "In meeting with claimant counsel, attorney James Jenkins, wherein we discussed settlement valuations concerning the questionable aggravation of the preexisting condition as being the accident related with the questionable matter of legal liability with the latent defect defense."

Isn't it true Mr. Summers continued to assert that at your direction, or the direction of his superintendent?

A Yes, and properly so.

Q Even though all of your people have said that -- Excuse me, I didn't mean to interrupt. Go ahead.

A There was an indication in this case that the brakes had failed on this thing, as well as there was some negligent maintenance. Certainly if you were going to try to argue this, or defend your insured on this, you would say you were going to bring up all the defense points. That's what you're supposed to do. Just like the attorney is going to bring up all of his offensive points on it.

Q Even though you know that your own file indicates that there is no merit to your defense?

[228] A I don't think that that's what our file indicated. I think it said that there was still negligence, maintenance, negligent maintenance on it, but that there is a possibility of a latent defect defense on it.

Q All right. Let's read and see how Mr. Summers is using that defense. Starting right here. "I have deferred any response pending a possible negotiation of settlement with the claimant insured Hansen so as not to jeopardize our position with the latent mechanical defect, in that we could establish a precedent in assuming legal liability responsibility for one and denying another."

Isn't it true you were asserting that because you could deflect the fault of the accident and try and pass it on to the manufacturer of the car or something like that? The truck, I mean?

A If my memory serves me correct, he's talking about a demand from the Utah state department there, I believe we paid that. So he obviously didn't assert any defense to them, if that was the case.

Q Well, I think it was asserted. Keep looking at it with me. He states here, and this is McGlinn to Summers, again, giving him direction as what to assert. "We still have the latent defect defense." He's still [229] encouraging Mr. Summers to use that defense, isn't he?

A He was stating that that is a possible defense, yes.

Q Well, I'm not going to keep going on, I think it's clear that Mr. Summers did have a basis for his testimony, didn't he?

A I disagree.

MR. BELNAP: Your Honor, I'm going to move to strike counsel -- That's not a question. He's testifying.

MR. HUMPHERYS: That was a question. I said, "Didn't he?"

THE COURT: I'll sustain the objection.

Q (BY MR. HUMPHERYS) Isn't it true, Mr. Brown, that Mr. Summers did have a basis for claiming that State Farm was requiring him to assert a defense for which there was little or no merit to?

A I think it's true that he used that some in his negotiations. But there was merit to it.

* * *

[230] * * *

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Q (BY MR. CHRISTENSEN) Mr. Brown, as I mentioned, I haven't had time to look at the files since they were produced earlier this week. Surprisingly, I've been busy doing other things. But I borrowed this file from Mr. Belnap after you referred to it this morning, and I looked through it today as I was sitting there.

[231] This is the Gittens-Tingley matter. Now, the law provides special protection to children in settlements, doesn't it?

A Yes, you can't settle with a child under age, and hold them to that settlement, unless you get a court-approved settlement.

Q The law requires that a judge look at the settlement and make sure it's being fair to the child, and at least in Utah, the law also has some provisions, depending on the amounts of the settlement, to make sure the money is protected and used for the benefit of the child.

Mr. Summers testified, I believe, that State Farm at times ignored the law requiring that settlements of minors be approved by the court.

MR. BELNAP: Your Honor, I'd like to voice an objection in terms of lack of foundation for this witness with respect to the law, and also under the uniform probate code in effect in this state at that time with respect to matters under $5,000 that can be approved without court order.

MR. CHRISTENSEN: That's not an objection, that's a speech again.

MR. BELNAP: Well, I --

THE COURT: I'll allow the -- I think the [232] objection properly frames a concern for the examination, and I'll allow it.

MR. CHRISTENSEN: Okay, I'll cover that.

Q (BY MR. CHRISTENSEN) Was it your understanding, Mr. Brown, that if you're going to settle a personal injury claim of a child, you needed to get the court to approve it?

A No, that was not my understanding.

Q It's not?

A No, sir.

Q I thought you just said you understood the court did have to approve settlements of minor's claims.

A I said if you wanted a final release that was going to be good forever, you had to get a court to sustain that. We could make a payment to somebody and not take a valid release, or not take a release forever, and it wouldn't make any difference.

Q Well, that's a small point, and I'll move quickly. There were four children injured in this accident, weren't there?

A Yes, there were.

Q Do you see a court settlement approval in there?

A There was not a court-approved settlement in there.

[233] Q Also, let me cover another area. This was an accident where -- That was clear liability, wasn't it?

A No.

Q Didn't Mrs. Gittens cross over the center line and hit the Tingleys' car head on?

A Yes she did.

Q That's not clear liability?

A Not when you come upon a sudden rain storm, and as I think Ray put it, a torrential rain storm, immediately, and she lost control due to the rain storm and crossed the center line.

Q And you didn't think it was clear liability?

A That would fall under the area of sudden emergency. So I personally don't think it's -- Ray Summers never did go into that and clear it up, but I don't even know he mentioned it in this file. But that would certainly be a defense in this case.

Q Ruth Tingley, who was a passenger on the right side of the road when it got hit, wouldn't have had any -- Excuse me, was she the driver of the other car?

A Yes, Ruth was the driver of the other car.

Q Okay. She was seriously injured. I'm looking on page 3 of, I believe it's the CLR.

A Yes, that would be the CLR. And the initial [234] report of injuries would indicate that she had serious injuries.

Q It says, "There's no indication of prior injuries or accidents, she sustained a possible fracture of the skull, with severe facial lacerations, a possible compressed fracture of the cervical spine, and possible fracture of the right leg. There may be demolation -- " And I don't know what that is. Do you know?

A I'm not reading that, so I'm --

Q -- and/or permanent impairment yet to be confirmed." All right, let me move on. And the accident date was August 15th of 1980?

A That was the accident date.

Q So about two months later, three months later, in October -- Actually, I'm wrong. It's two months. There was a settlement with Ruth Tingley and others. Isn't that true?

A Yes.

Q And her medical bills at that time, and specials -- Excuse me, let me read about her medicals at that time. "Please note that Ruth Tingley will have followup medical care and plastic surgery repair for scars on the face, and an orbital ridge over the left eye. She may also have continued followup care for injury to her right knee. This will be handled," and so [235] forth, it goes on.

So this is a woman, a forty-year-old woman with serious enough scars on her face she needs plastic surgery.

A You're -- Is that a question? I'm sorry.

Q Yes. Do you want me to show that to you?

A No, I just didn't hear your question, I'm sorry.

Q She has serious enough scars on her face she needs plastic surgery.

A I would say that I wouldn't think that she probably needed plastic surgery, because she never did have any.

Q I just read, "Please note that Ruth Tingley will have followup medical care and plastic surgery repair for scars on the face and orbital ridge over the left eye." That's what was known, at least when it settled, right?

A Well, that statement is made by Ray in there, but apparently there was never any followup surgery at all.

Q Maybe because she didn't have enough money for it?

A She had medical care that would have covered that, and we left that open in the release on it to pay [236] for future medical care, and she didn't ever bring any of that about.

Q Her special damages up to the time of the settlement were just under $4,000.

A We paid for that direct at that time.

Q Okay, and I'm not saying you didn't. $3,827?

A Can I hold that? My glasses won't get between that distance, there.

Q Sure.

A Yeah, her medicals were $2,200, and then we paid loss of income of $900 and loss of services for $720.

Q So that the specials to that date were just under $4,000?

A If you include the loss of services, no, that isn't specials.

Q And she had scars on her face and a bad knee.

A And I'm sorry, looking at the file I couldn't tell if she had scars. There's no pictures or anything like that in there.

Q What I want to get to, Ray Summers talked her into taking $1,000 for her pain and suffering, her future disability, her right to be compensated for the disfigurement on her face, didn't he?

A That's what the settlement was, yes. She and [237] her husband signed, I think, signed the release, or at least they signed the statement indicating the injuries to the children.

Q That's not fair, is it?

A I don't know if that's fair or not in that particular case. There's a potential sudden emergency. If you were to win a case on sudden emergency it would be worth zero.

Q Isn't one of the classic examples of where you pay extra money for general damages, is when you've got a woman's face that's scarred?

A I've never seen anything like that, no, there's any classic example. I don't know what you're talking about.

Q Ray Summers took advantage of her on this $1,000 settlement, didn't he?

A I would hope that he did not, no.

Q But he just may have.

A Without knowing the discussions on any type of sudden emergency or anything like that, I don't know. She may not have had a claim that was worth anything under the sudden emergency doctrine.

Q You keep bringing that up. We've got a car in a rain storm that goes on to the wrong side of the road and hits somebody head on. You say that's not [238] liability?

A If the law says that if you run into a sudden emergency and you just didn't -- The facts, or the rain caused the accident, rather than you, I know at least in Colorado, you don't have a right to recover on that, and we've won lawsuits on that, yes. I'm not saying that this is what I would want. I'm just saying that's what the law provides.

Q It says, "Analysis and evaluation. The negligence possibly imputable to our insured driver is traveling too fast for existing conditions and failure to maintain control of the described vehicle, which negligence appears to be the proximate cause of the accident, with mitigating circumstance of extreme weather conditions. Considering the imputable negligence to our insured, this appears to be a justifiable claim worthy of legal liability responsibility."

You owed the money, didn't you?

A He brought up the fact that there were mitigating circumstances on the rain. He did not, as I mentioned a while ago, he did not bring up the sudden emergency defense on that. But if you presented that defense, it could result in a zero verdict. You asked the question, did I think he was cheating her on that, [239] we encouraged that, no, I don't think so.

Q All I'm saying is, Ruth Gittens was entitled to be treated fairly for having a scarred face for the rest of her life, and injuries to her knee, and other things that go into general damages, and $1,000 isn't fair, is it?

MR. BELNAP: Your Honor, repetitious, asked and answered.

THE COURT: Sustained. That's been asked.

MR. CHRISTENSEN: All right, I'm through with this.

* * *

[240] * * *

(The jury left the courtroom.)

THE COURT: Let the record show the jury's left the courtroom. You can step down, Mr. Brown. Please, have a seat.

* * *

[251] MR. BELNAP: And the second thing is, Your Honor, we, since Ms. DeLong testified and brought up in her testimony the allegation of a $175 million scheme on the part of State Farm as to the earthquake, the Loma Prieta earthquake loss that State Farm shenaniganed $175 million from policy holders in that, we have been looking for and have located a Mr. Hernandez, who was with the California Insurance Department; is that correct, Stuart?

MR. SCHULTZ: He was the deputy commissioner.

MR. BELNAP: He was the deputy commissioner who received all of that documentation from Ms. DeLong, and reviewed it and investigated it, and found no cause to proceed with the claims that she has told this jury about. And we would like to notify the court that we would like to call him as a rebuttal witness to Ms. DeLong.

MR. CHRISTENSEN: Your Honor, we didn't get into that in our presentation of Ms. DeLong because the court had indicated we should stay out of earthquake. It was brought up through Mr. Crandall's cross, and so I was allowed briefly to cover it.

We were handed today, from Mr. Ovard, right after the lunch break, some new information they want to present through him.

[252] We still feel like we're getting trial by ambush in this case. And this would make the sixth insurance regulator they want to inject into this case. I don't think it's proper that they've got five. It's repetitious. We presented Mr. Prater and were required to present that as part of our case in chief, rather than bring him back on rebuttal, with the understanding that the insurance regulator stuff would stick to the depositions and the evidence that was there.

And if they bring him, we're going to have to go out and marshal evidence on the California earthquakes. I understand there's some San Francisco fires that State Farm pulled some shenanigans in. This case isn't going to end. And boy, if they can't cover this stuff with five insurance regulators, it's -- We're confronted with new evidence daily in this case. It's not fair, it's not manageable.

MR. HUMPHERYS: Let me just follow up on one point, too. One of the concerns we've had is that Ina DeLong has talked about this, testified about it two years ago. It has been well known for two years. State Farm is well aware of this evidence that she has, because she has testified against

State Farm in a number of cases regarding this earthquake stuff. State Farm moved to exclude all of that and the court granted it.

[253] Mr. Crandall, despite State Farm's own request and restriction in evidence, opened that door. And now for them, after all of that, to place that kind of burden on the court, on the parties, and on counsel, to totally create now an entirely new issue in this case, is absolutely wrong.

When, if they were going to go into the earthquake stuff, they shouldn't have moved to exclude it. And they should have disclosed this regulator in advance, we could have had the normal discovery, and dealt with it in pretrial motions and discovery, and had it done. Instead, they've chosen to do the opposite, and it's just highly prejudicial to us.

MR. SCHULTZ: Can I say something about that?

MR. BELNAP: Just one thing.

THE COURT: One more response, and let's --

MR. SCHULTZ: I'll convey it.

THE COURT: That works for me.

MR. CHRISTENSEN: Let me just add something. I think Mr. Crandall, in cross on Prater, covered the point they want to make, too. He said that the California Insurance Commission hadn't done anything, that Ina DeLong had gone to them and they hadn't done anything. It sounds like the point they're trying to make.

[254] MR. BELNAP: Your Honor, it was clear to me that the only foundation Ina DeLong had for any of her opinions were fire cases. When you got right down to it, that was her foundation. And her testimony on it was stricken. And if it's not stricken, when you talk about opening doors, he asked her, "Isn't the reason you left State Farm because of your relationship with contractor," blah, blah, blah. And that door wasn't opened, Your Honor, in our view, by doing that. She opened it, counsel brought in a stack of documents and waved them and slapped them down right in front of the witness.

THE COURT: Okay, let's do it this way. I'm not at all interested in bringing any more witnesses in here. I'd like to see a few less of them. I tried to communicate to Mr. Crandall that going into earthquake and fire was a problem. To me, all of that has anything to do with this case is virtually, is impeachment, unless there's some linkage, and the linkage has been tenuous.

It seems to me maybe what we ought to do is have some kind of an instruction to the jury which would, in effect, serve the purpose of taking out of any consideration substantively anything that has to do with anything but auto cases. And I just don't see that we [255] need for them to concern -- Or policies that were common to the auto company and the fire company.

The fire cases have not done a lot to advance this case, we had plenty of information on the auto cases, and I'd be more inclined to just deal with it as a matter of instruction. And I think what you ought to do is formulate some instructions to the jury that attempt to tailor what evidence they ought to be considering in support of the claims, as opposed to what evidence was before the jury that deals with the credibility of the witnesses and other matters which are unrelated to the issues that we have defined as being the issues to be tried, and let's just do it that way.

* * *

[Vol. 26, R 10281, commencing at p. 4]

* * *

WILLIAM S. BROWN called as a witness by and on behalf of the Defendant, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

CROSS EXAMINATION BY MR. HUMPHERYS:

Q Mr. Brown, as we were closing last Friday your cross examination, we were talking about some of the releases that Mr. Summers had obtained, and I'd asked you whether you were aware of whether or not State Farm was trying to stand on releases and trying to throw out the claims of those who were claiming Mr. Summers had misrepresented and cheated the claimants in obtaining the release. And they were suing to try and overturn the release. Do you recall that testimony?

[5] A Not exactly, no, but --

Q Okay. Do you recall that you said you recalled about four or five cases, lawsuits that were filed where the release was being asserted as having been fraudulently obtained by Mr. Summers?

A I don't recall saying fraudulently obtained. I think I recall that there were four or five releases that were being challenged, apparently.

Q Isn't that about the only way you can challenge a release, is to say that it was fraudulently obtained?

A No.

Q Do you think there are other ways?

A Certainly you could have a case where you had a misunderstanding at the time of settlement. You could have mutual mistake. There wouldn't be any fraud there.

Q Let me give you the Bair versus Christofferson case, which I want to review with you, and I'd asked you the question, "Isn't it true that State Farm attempted to take advantage of Mr. Summers' fraudulently-obtained releases?" Do you remember that question to you?

MR. BELNAP: Your Honor, I'm going to object for lack of foundation and assumes facts not in evidence to this file he's referring to.

[6] MR. HUMPHERYS: That was a general question. It wasn't relating to this specific file. I was asking generally if State Farm did that.

THE COURT: Overruled, he can answer.

THE WITNESS: Would you repeat the question?

MR. HUMPHERYS: I'll try.

Q (BY MR. HUMPHERYS) I asked you last Friday, and I'll ask you again today, isn't it true that State Farm attempted to stand on the releases which were allegedly fraudulently obtained by Mr. Summers, and to take advantage of those releases and try and throw out the claims?

A I don't think State Farm was trying to take advantage of anything, sir.

Q Okay, well, let's then look and see that. I think that is the same answer you gave last Friday. You have in front of you the official court file of Cache County. Do you see that?

A Yes.

Q Have you had a chance to look at that over the weekend?

A No.

Q All right. Last Friday when I handed it to you, I think you went through it a little bit but not much.

[7] A No, I was answering questions then.

Q Do you see a complaint there?

A Yes, I do.

Q Let's look at the answer. First of all, I'd like to draw your attention to who the attorney is that answered in behalf of the defendant. Wendell Bennett, correct?

A Wendell Bennett was the attorney, yes.

Q And he was the attorney retained by State Farm, wasn't he?

A Yes.

Q All right. Now, just so the jury -- The jury may not be familiar with what an answer and complaint is. Typically, Mr. Brown, when a lawsuit is started, someone files a complaint with the court, and then serves the complaint on the opposing side. Is that a fair statement?

A That's correct.

Q And then the other side has so many days in which to answer, file a formal answer with the court so that the court knows how they're answering?

A Yes, they answer the issues alleged on the complaint.

Q All right. Now, State Farm is not the defendant, here, and let's make sure we understand why. [8] This is a third-party claim, isn't it?

A I'm assuming that it is, yes.

Q So that meant that Mr. Bair had been injured in an accident that was caused by Scott Christofferson. Christofferson was the insured of State Farm, wasn't he?

A I would imagine that would be correct in this case. I haven't seen that file.

Q All right. Now, since Mr. Bennett is defending Scott Christofferson, that seems right, doesn't it?

A I assume that would be correct.

Q All right. So that the jury also understands, an injured party like Mr. Bair or Mr. Slusher or the Ospitals, they can't sue State Farm directly, can they?

A Not on a third-party claim, no.

Q They have to sue the person that caused the accident, which would have been Mr. Campbell or Mr. Christofferson or that type of thing, right?

A Yes, they would sue the party that would be negligently causing something.

Q All right, now, let's turn to what Mr. Bennett alleged in his answer. Do you want to turn to the next page? By the way, the date of this answer is dated June 18, 1981. And here we have in paragraph [9] 7.

Now, in the answer, don't you raise all of the defenses that you are aware of to try and defeat the claim?

A I think generally that would be a true statement.

Q Okay. Now, let's look at paragraph 7, what Mr. Bennett alleged as a defense. "Further answering the plaintiff's complaint, and by way of a further and separate affirmative defense, the defendant alleges that the plaintiff executed a full, final, and complete release in favor of the defendant of any and all claims."

Now, that release also released State Farm Insurance Company, didn't it? If you're not sure we'll look at it in a minute.

A I think it said that you release, the defendant alleges that they're going to execute the release in favor of the defendant. Yes.

Q That's right. But I'm saying the release also released State Farm, didn't it, or do you know?

A I would not know on that. I wouldn't think so, since they're not named.

Q Yeah, and they can't be named, can they, as we just discussed?

[10] A They're not named in this case.

Q But they can't be, can they? Mr. Bair has no cause of action against State Farm, right? We just went through that, as a third-party claimant.

A I wouldn't think so in this case, no.

Q Let's go down here to this point where it says, "That the matter here being sued upon cannot be pursued, it having been settled for good and valuable consideration by the plaintiff."

Now, let's just look at the next page, so we know that Mr. Bennett signed it, page 3, he sent a copy of it to Gordon Lowe, I think Gordon Lowe is now the judge up there in Cache County, isn't he? Or do you know?

A I don't know.

Q But Mr. Lowe was representing the plaintiff at the time. Okay. So now we know that Mr. Bennett is asserting that Mr. Bair's claim should be dismissed because of the release.

Now, just for the jury's benefit, can you tell them what a motion for summary judgment is, if you know?

A It's my understanding that a motion for summary judgment is when you try to, you're basically saying that all the facts are very clear, and you're [11] asking the court to make a determination that the facts are clear in one respect.

Q So there's no need for a jury, even, is there?

A Right.

Q The court can rule as a matter of law that there is no merit, or that there is merit.

A That's correct.

Q That there's no factual dispute. Now, if you'll turn a few pages down, we'll see here that Mr. Bennett, who was retained by State Farm, filed a motion for summary judgment. Do you see that?

A Yes.

Q Here's his name up here, which is customary, that the attorney who writes the pleading puts their name at the top of the pleading. All right. Now, let's see what he bases his motion on.

Now, he's representing the defendant, and State Farm insured the defendant, meaning if the defendant is found liable, State Farm has to pay, right?

A He's representing the defendant.

Q Right. But if Mr. Christofferson is found liable, State Farm has to pay under the policy, right?

A State Farm would, yes.

Q Okay. Now, let's find out what Mr. Bennett [12] is doing in this case. By the way, the date of this -- maybe we ought to turn to the second page so we keep this in perspective -- is the 26th day of March, 1982, signed by Mr. Bennett.

The reason I want to point out the date is, do you recall that Mr. Bennett said that he first discovered that Mr. Summers, he first discovered in September of 1981, almost a year before this, that Mr. Summers had been misrepresenting issues on releases? That's what he testified to. You may not have been --

A I didn't see his testimony, no.

Q Now, let's see what he says almost a year later as he now is bringing a motion for summary judgment. Drawing your attention, here, to the location, which is, he begins, "The plaintiff has executed a full, final, and complete release in favor of the defendant."

And then he says down here as he goes through some of the legal discussion, he says right here, "Under the terms of the release, the plaintiff, who received $2,031.52, unconditionally released and forever discharged Scott Christofferson and Betty J. Christofferson, their heirs," and the release goes through how it includes everybody in the world, their executors, administrators, agents, or assigns, and all [13] other persons, firms or corporations who might be liable. That includes State Farm, didn't it? That's a general release. They release everyone in the world?

A Well, if they had a cause of action.

Q If there had been a claim against State Farm, that was released as well. All right. And what was released, "From any and all claims, demands, damages," and so forth. Again, it goes through the legal talk which is designed to make sure that everything in the world is released. Do you see that language there?

A Yes, I see the language.

Q All right. Now, go to the last paragraph. "There are no facts, either disputed or undisputed, which can alter the terms of the written agreement entered into by the parties, and the defendant is, accordingly, entitled to judgment against the plaintiff dismissing the above entitled action with prejudice."

Isn't he asking the court to throw out the Bairs' claim because of the release?

A This is part of it, yes.

Q Okay. Now, I mentioned that we wanted to see the release. This is the release, signed by Allen Bair, it looks like on May 6th, 1980, and it has the language which we just read, where everyone, essentially in the world or universe, or however --

[14] MR. BELNAP: Counsel, do you have the full release? Is there a reason you've cut the top off?

MR. HUMPHERYS: That was because I didn't take it out of the -- Let counsel look at that release --

MR. BELNAP: I've got a copy of it, but it only lists Christofferson, and this is Christofferson.

MR. HUMPHERYS: Yes, that's cut off. You'll see here, too, counsel, that I did not take that out of the original folder. I tried to bend it as best I could so that the copy would be showing. So, for clarity's sake, it does list Mr. and Mrs. Christofferson up above.

Q (BY MR. HUMPHERYS) Do you see that?

A It just says for the consideration of $2,031.32 it discharges Scott Christofferson and Betty Christofferson.

MR. HUMPHERYS: I was not intending to do anything. I apologize, but I also was trying not to take anything out of the file or rearrange it in any way.

Q (BY MR. HUMPHERYS) Okay, now, typically when someone files a motion to throw a case out like this motion for summary judgment, the other side tries to defend and present a case why it shouldn't be thrown out, right?

[15] A They normally respond to any motion for summary judgment and give their side of it. That's one side, they give the other side.

Q And the attorney for Allen Bair did file an answer. Do you see that there? Response to motion for summary judgment? Again, the top is cut off, but that's just the name of the court up there. And the pleading caption up at the top.

A Yes, I have that.

Q All right. Now, let's read what he says as the reason why this case should not be thrown out because of the release. Let's go down here to the last paragraph of the first page, and let's read it together.

It says, "The release in question was supplied by Ray Summers, an agent for State Farm. When the release was executed, it was executed on the basis of friendship and trust and understanding long established between Ray Summers, the insurance agent, and the plaintiff and his wife. This relationship was the result of the above-named persons living in the same LDS ward boundaries, and being personal acquaintance. The plaintiff and his wife fully trusted Mr. Summers, and thought he was protecting their rights." And then it goes on from there.

Do you recall that Mr. Summers had [16] represented to them that he would leave the release open and allow additional claims to be made against State Farm?

A No, I don't -- I haven't read that file, so I don't recall that.

Q Okay, well, rather than reading the whole file, let me just put up here the fact that they also represent to the court

that the statements made by Mr. Summers were untrue. Starting right here, "The representations made by Mr. Summers were false, as there were no coverage for the plaintiff under the State Farm policy."

Now, this is a lengthy pleading that was filed, and rather than read through all of it, do you understand that the plaintiff was asserting -- Now this is approximately a year later, 1982. It was filed in '81, right?

A I think -- Did you say September, or when? I'm sorry?

Q The action, this lawsuit was filed in '81, and these, now, Mr. Bennett, about a year later, is trying to throw the case out based on the release. And now we have the response, and there's an affidavit in there from Christoffersons talking about how that release was fraudulently obtained. Do you see that [17] there?

A No, I don't, I'm sorry.

Q It's right after the response, there's an affidavit by Mr. Bair.

A You're talking about a separate document in here.

Q Yes.

A There is an affidavit, yes.

Q Pardon me?

A I see the affidavit, yes.

Q And in that affidavit he swears that he had been defrauded by Mr. Summers. Do you see that?

A (No audible answer.)

Q Now, before we get to the decision, Mr. Brown, I would like to represent to you that Mr. Bennett --

MR. BELNAP: Counsel, I don't see the affidavit that you're referring to. Is this the one of Francis Bair, or is it of Mr. --

MR. HUMPHERYS: Yes.

MR. BELNAP: That's Mrs. Bair?

MR. HUMPHERYS: Yes, the affidavit of, signed by Francis Bair.

MR. BELNAP: I didn't see the word "defrauded" in here.

[18] MR. HUMPHERYS: I concede they didn't use the word "defraud," but they did state, didn't they, Mr. Brown, that Mr. Summers had misrepresented the facts to them?

THE WITNESS: Can I look at this before I answer the question?

MR. HUMPHERYS: Of course. I don't want to have you answer something you haven't looked at.

THE WITNESS: I don't see where you're saying defrauded, no.

Q (BY MR. HUMPHERYS) The word "defraud" was not used.

A They said that Ray Summers was dishonest with them.

Q Okay, I don't want to play word games, he was dishonest with them.

Okay, now, I want to represent to you that Mr. Bennett, a few days ago, or a couple of weeks ago, testified here under oath that in September of 1981, the year before this memorandum where he tried to throw the case out based on the release, in a different case, the Gittens case, he said, "I learned for the first time that Mr. Summers had not been truthful in obtaining the release in the Gittens case, and I was shocked," I think is the word he used.

[19] He said, "I immediately called you and Mr. Noxon to tell you that Mr. Summers had obtained the release dishonestly." Now, do you --

MR. BELNAP: Your Honor, I'm going to object to the statement of counsel as to that testimony. The testimony of Mr. Bennett related to bills that Mr. Summers had created in the file.

MR. HUMPHERYS: Well, the jury's heard it, Your Honor. And when we discussed it with him he talked about how they were phony documents in the file, and that was the very issue that we cross examined him in the Gittens file.

THE COURT: I'll let the record stand based on the fact that both sides have stated what they remember, and let the jury rely on the jury's memory of what the facts were.

Q (BY MR. HUMPHERYS) All right, now, Mr. Brown, do you recall Mr. Bennett, in September of 1981, telling you that Mr. Summers had obtained a release in the Gittens case based upon phony and untrue documents?

A No, that's not my understanding at all.

Q Okay.

A Mr. Bennett had told us that there had been some medical bills that Ray Summers had prepared [20] himself, some prescription bills that he had prepared, a wage statement that he had prepared and signed himself. But that didn't have anything to do, I don't think, with the release. That would have been to the advantage of the plaintiff in that case, apparently.

Q Isn't it true, Mr. Brown, that the Gittenses were claiming that that release was obtained fraudulently, just like the Bairs were claiming?

A I don't know what the Gittenses were claiming on that.

Q All right. I think we went through that file with Mr. Bennett. Let's look now, and see how the judge ruled as it pertained to this motion. Do you see here, this is called a memorandum decision. That's what the court, when the court decides a motion, like we just saw.

And it's signed here at the bottom, even though it's been partially cut off. These are legal size, and I have to cut it back to a paper size. This is Judge Christofferson's signature. Do you see that?

A Yes.

Q And it was on April 22nd of '82. All right, let's read what he says at the beginning. He said, "Plaintiff has filed a motion for summary judgment on the basis -- " Now, I think he made a mistake, that was [21] defendant's motion. Mr. Bennett's motion for summary judgment. Do you see that?

A Yes,

Q He says "plaintiff," but I think that that's a typographical error, because there's no other motions in the file, are there?

A Well, he's saying plaintiff is attacking the validity of the release. Is that what you're talking about?

Q The first sentence, "Defendant has filed a motion for summary judgment on the basis of a release signed by the plaintiff."

A That would be the defendant.

Q That was a typo by the judge. "Plaintiff attacks the validity of the release, not on the basis of a mutual mistake of fact regarding injury, but upon the facts surrounding the signing of the release and the representation made by Mr. Ray Summers, a representative of State Farm Insurance."

And then it goes on to explain how, based upon the record, there are facts alleged that Mr. Summers had not indicated a truthful statement as the release was being signed. And then finally, at the very bottom he says, "The motion for summary judgment is denied, and counsel for plaintiff is requested to [22] prepare the appropriate documents."

Now, would you tell the jury -- The case eventually settled, didn't it?

A I believe it did.

Q Can you give us the date of the stipulation? It's toward the end of the file.

A I'm sorry, I was kind of paying attention to what you were saying before that. You were talking about something, the statement of the judge. It raises the question of fact as to the validity of the release, so he turned down the summary judgment.

Q Right.

A Now you're looking at --

Q The settlement. Now, that meant that he didn't throw the case out, that there was a legitimate basis for plaintiff's claim that the release was obtained on some kind of a misrepresentation, right?

A No, to me it means if there wasn't conclusive proof with one or the other.

Q So there was a basis for the plaintiff's --

A There was a question.

Q Now, when did the case settle? Go toward the end. It's a stipulation of dismissal.

A Well, there's an order of dismissal in there on May the 3rd, so I guess that would be a final --

[23] Q Over a year later, of 1983. You saw the year later, didn't you?

A I saw over a year later?

Q It was a year later.

A Again, I haven't read this file. I don't recall when this action was first filed. This is May of -- I guess May of -- Yeah.

Q The complaint was filed in '81, Mr. Bennett moved for summary judgment in '82, and when was it settled? May of '83, right? A year later.

A The final dismissal was done --

Q Isn't it true, Mr. Brown, that State Farm strung those people out and tried to get them to force a compromise settlement to avoid having to face the misrepresentations of Mr. Summers?

A No, I wouldn't say that would be true, from what I'm reading here.

Q Isn't it true that State Farm attempted to take advantage of a release by not having to pay any more money, and standing on that release to the detriment of the Bairs, who claimed that they'd been misrepresented by Mr. Summers?

A No, State Farm is not trying to take advantage of anyone. If they felt that the release was valid, it would depend on the questions of why they felt [24] the release wasn't valid. And we haven't discussed that.

Q Isn't it true in the other four or five cases you referred to last Friday, that State Farm did the very same thing, tried to throw the case out based on the releases that Mr. Summers had signed, where they were attacking it, based on fraud?

A State Farm, first of all is not going to do that. We're not going to try to attack anything. We're going to look at all the facts on the individual case. I would say, to the best of my recall, State Farm settled those cases.

Q But not for years after, did they?

A I have not read those files, so I cannot answer that question.

Q Well, we look at the Gittens file, and that was settled in '83, two years after Mr. Bennett said he had learned of Mr. Summers' defrauding.

A I have not reviewed the Gittens file, no.

Q All right. Well, we've already heard that, I don't want to go into it any more.

Mr. Brown, I want to cover some of the, two or three other cases with you that we went through, or that we didn't go through last Friday that you testified about. One, however, I'd like to return to, is the case [25] involving the Idaho accident.

Remember when we talked about that, and I asked you whether Idaho law had, what kind of comparative fault Idaho had and what kind of fault Utah had? And the issue was that

Mr. Summers said that you had tried to take advantage of the Idaho law, which was more favorable to State Farm than the Utah law, even though they were Utah residents. And you said you saw no evidence of that in the file whatsoever, and I asked you some questions, and you weren't sure about Idaho law.

So over the weekend we were able to try, or we were able to locate some of the statutes in Idaho, and some of the cases. And as best that we can determine, and you're welcome to look at the statute, the Idaho statute regarding the comparative fault of 50 percent, we talk about pure comparative, or more than, or whether it's like Utah, equal to. The Idaho statute is similar to Utah in the comparative fault. Do you see that? Or do you already know that?

A I already know that.

Q You already know that. Okay.

MR. BELNAP: Your Honor, let me just raise an objection at this point. Counsel represented to the court and the jury last Friday that the Idaho statute [26] was a pure comparative statute, and you asked him if he had a reasonable basis to say that, and he represented that, and it's not true.

MR. HUMPHERYS: Your Honor, I said that I clerked there fifteen, twenty years ago, and that was a memory I had. And we looked it up so that we could make sure it was true or not true, and I wanted to clarify that.

THE COURT: Thank you. The record's made.

MR. HUMPHERYS: I don't wish to have anything that has been stated that is incorrect.

Q (BY MR. HUMPHERYS) However, what we did talk about on the guest statute was true, wasn't it? That Idaho had thrown out their guest statute, but Utah had not.

A It's my understanding, yes, that Idaho did not have a guest statute.

Q All right. And that was because the court, in 1974, found that unconstitutional. Now, let me go back to that for just a moment. Isn't it to State Farm's advantage to apply Utah law, which had the guest statute, which could be a basis to throw out the claims of the passengers in that car, than to apply Idaho, which did not have the guest statute?

A Counselor, State Farm doesn't have the [27] option. The site of the accident determines which state has jurisdiction on it. You have to go by Idaho law.

Q When Utah, when the policy is issued out of Utah and there are Utah residents, Mr. Brown, isn't it true that Utah law applies?

A There would be a possibility, under the conflicts of laws, that that might go. But again, in this case we were talking about Idaho.

Q Right. And that's exactly what Mr. Summers said you did. You tried to apply Idaho law instead of Utah law because it was more favorable to State Farm's position. Exactly what he testified to, isn't it?

A I'm sorry, that doesn't make any sense.

Q Counsel just reminded me I had that backward. Because Idaho -- That's right. We'll move on. We don't need to decide all of the Idaho laws and Utah laws.

But the point I was getting at is, when you first testified on this case, you said that there was no evidence whatsoever, after your review of the file, that there was any issue regarding favorable law in one state or the other. But that's not correct, is it? There was law that would apply that could have been used in a more favorable position to the plaintiffs.

A And we didn't try to do that. This case had [28] to do with assumption of risk, and that's the same law in both states. It didn't make any difference.

Q But guest statute also applies, doesn't it?

A Not if it happens in Idaho.

Q Well, we'll move on. Let me cover another file that we didn't talk about. And this was the Huppi file? Am I pronouncing that right, or do you know?

Remember testifying that Mr. Summers had, in his testimony, talked about the Huppi case as illustrating how State Farm encouraged claimants to consider malpractice claims in order to avoid paying out on a claim, and you said you'd read the file and never seen any evidence of that in the file. Do you remember your testimony in that regard?

A Excuse me, let me try to find that real quick in my notes, here.

Q You bet.

A Yes, our insured was --

Q Remember your testimony, and you said that you had read the file, and you found absolutely no evidence to support Mr. Summers' claim that he was instructed to try and assert a malpractice situation to avoid payment of claims?

A Yes, his allegation was that he said he was to encourage a claimant to bring an unwarranted [29] malpractice action against a treating physician.

Q All right. And you said there was absolutely no evidence in the file to your knowledge.

A I did not see any evidence in the file that would indicate that, no.

Q Let's look now at this letter. Let me show that the letter was dated December 17, 1980, it was addressed to State Farm. And so we see the second page, we see Mr. Terrel Huppi, he's the injured person?

A Terrel Huppi was the claimant.

Q Let's read what he says to State Farm regarding his accident. I want to draw your attention to the second paragraph. He's writing, and he says, "I would like to point out a few facts which made me very displeased with the way

some things have been handled. To be more specific, I'll summerate," I'm not sure that's a word, but he used it, "some of them."

THE COURT: "Enumerate," I believe he said.

MR. HUMPHERYS: Yes, you're right, it is "enumerate." This is a poor copy I have, too. "I'll enumerate some of them.

"First, early morning following the surgery on my leg, which was completed about 11:30 p.m., and while I was still under the effect of anesthetic, I was asked to make a recorded statement over the telephone by [30] your claims officer." That was Mr. Summers, wasn't it?

A Ray Summers was handling the case, yes.

Q Okay. "I have a very vague memory of what was said in that conversation. Couldn't that have waited until I was fully aware of what was going on?

"Second. Within hours after this surgery, my mother was confronted by Mr. Summers stating that we should get a second opinion by an orthopedic surgeon, that my doctor wasn't qualified for making such repair, and I was in danger of losing my leg if things were not taken care of right. Naturally, this frightened her, and she gave her consent for Mr. Summers to make arrangements to have this done, thinking it would be taken care of immediately, and surely before I was released from the hospital. No orthopedic surgeon came to see me.

"During the next six months when he visited with me to make payments on some of my bills, he repeatedly run my doctor down to me, and I felt like I was in the center of an old feud between them."

Doesn't this sound like, Mr. Brown, that he is doing exactly what he said he did when he testified, here?

A No, absolutely not. He said he was encouraged to do that. I'm not saying he didn't do [31] this. I'm just saying he wasn't encouraged by State Farm to do that.

Q We'll look at it in a minute. But at least there's evidence here, was there not, that he was telling the insured, or excuse me, the claimant, that his doctor was not giving proper, appropriate care.

A No, I think it said that, he says that their doctor wasn't qualified for making such repair. I don't see any evidence there to where he told them to go file a malpractice action against anyone. That's what his allegation was.

Q Running his doctor down has nothing to do with perhaps suggesting that he ought to bring an action against his doctor.

A No, I don't think, to me, that means you ought to go out and sue somebody. I think the file reflected, the best I recall on it, that he was trying -- This young man had a terrible knee injury, and he was trying to get the young man to go to a doctor that might be a specialist in that area. I don't see to where that's telling that young man to go sue somebody.

Q All right. He doesn't use the word "sue," you're correct. But when you fill in the details of what Mr. Summers testified about this, then this becomes meaningful, doesn't it?

[32] Let's look at number 3, or the third point. "Third. On the morning of December 5, 1979, Mr. Summers called my mother and asked to get a statement from the Budge Clinic on my total bills. She had been after him for some time to take care of it, as the billing notes were getting nasty, and the interest was going up all the time. Because of nerve involvement -- "

Let me see if we can short circuit this. Do you recall during the rest of this paragraph he explains Mr. Summers went into the Budge Clinic and represented that he was Mr. Huppi's father in order to get the medical records?

A I recall that allegation in his letter.

Q Now, let's look at the memorandum that Mr. Summers sent to the superintendent, Mr. McGlinn. Now, again, let's just, by way of foundation, you have no personal knowledge of anything that went, that was involved in this file, do you?

A As far as handling of the file at that time? I wasn't involved with the handling of that file.

Q And the communications that were going on, you had no involvement in, did you?

A No. I read the file material, is what I read.

Q And this was fifteen, twenty years after the [33] fact you read the file, and that's what you're basing your testimony on.

A I'm basing my testimony on what the file says.

Q All right. And if the file has been purged, or if it has self-serving comments in it, that's all you have to read, isn't it?

A I read what's in the file contents.

Q All right. Now, let's look at what we do have in the file. This is a memorandum from Mr. Summers to Thomas McGlinn, who's the superintendent. It's dated, it was dictated in September of 1980, and looks like typed shortly thereafter.

A I didn't catch the date of that last letter that that young man had written. Do you have that still in front of you?

Q Yes, it was December 17, 1980. So this memorandum was before.

A So this is about three months before that one? Okay.

Q Right. Let's look and see what he is reporting to his superintendent. Now, it's typical that a claims representative reports to a superintendent, isn't it?

A Yes, that's who he would report to.

[34] Q All right. And you alert the superintendent regarding followup of any requests and directions and instructions, don't you?

A I'm sorry, I'm not catching your question.

Q When a superintendent gives instructions to a claims representative to do certain things in the file, there's usually a followup, isn't there?

A Sometimes there is, yes.

Q All right. Let's look and see what Mr. Summers reports. "I have explained to Mr. Huppi that without the appropriate care, we cannot arrive at a reasonable figure for his sustained injuries, pointing out to him that the problem now exists with inadequate care, and not the injury."

Isn't that saying, Mr. Brown, that he's saying State Farm is not going to pay for the doctor's treatment because it was inappropriate?

A No, that's not what he's saying. He said, without knowing basically where they're going, you can't arrive at a reasonable figure how to evaluate the case.

Q Didn't he just say that they're not going to pay because of inadequate care, and not the injury? In other words it's not the injury that they're complaining about, it's the inadequate care?

A You're reading that different than I do. It [35] says, "Without appropriate care we cannot arrive at a reasonable figure for this." He was trying to figure out how to evaluate the case.

Q This case was, even though Mr. Huppi was claiming substantial medical expenses and lost income, that totalled probably over $25,000, he eventually settled it for $30,000, right?

A Do you want me to look up the amount of the medicals on it?

Q Do you recall Mr. Huppi saying that with all of his future lost income and the future medical care, and his disability, that he would need at least $90,000?

A I remember at one time he made a demand of $90,000, and the final settlement was a little over $30,000. I remember that.

Q Okay. Now, regarding when we talked about the Miller and Shoop case, we had prepared some papers which demonstrated that after you had concluded the case was clearly worth more than the $30,000 policy limit you then wrote to Strong and Hanni and indicated that you were going to have Mr. Summers negotiate that for less than. I want to offer Exhibit 145 into evidence.

THE COURT: Any objection?

MR. BELNAP: No.

THE COURT: Received.

[36] (WHEREUPON Exhibit Number 145 was received into evidence.)

MR. BELNAP: Your Honor, we would like to, at an appropriate time, offer a complete copy of these files as exhibits, and we'll get those photocopied and prepared.

THE COURT: I think you raised that before.

Q (BY MR. HUMPHERYS) Now, there's one other case I'd like to have you talk about, and that's the Logan City case. I think that's one of the last ones that we haven't talked about. Do you have that file in front of you?

MR. BELNAP: What's the name of the insured on that, counsel?

THE WITNESS: This would be the Hugie case.

Q (BY MR. HUMPHERYS) The Hugie versus Logan City. My memory is, when Mr. Belnap was questioning you last Friday, he said that Mr. Summers had testified that Logan City was attempting to seek reimbursement for the worker's compensation claim, or words to that effect. And then he asked you, "Did, in fact, State Farm pay Logan City?"

And you said yes, and I think you put a check up on the screen and said they paid. Would you please find that check.

[37] A It probably wouldn't be in this file. This is the field file, and the checks go to the master file. But I don't -- Maybe it's in here, I don't know.

MR. HUMPHERYS: Do you have the original?

MR. BELNAP: I think that's the file. Let me check another book on that.

Q (BY MR. HUMPHERYS) Well, let me ask you, Mr. Brown, do you remember testifying Friday that what State Farm paid for, for Logan City, was for the damage to their truck?

A Yes, we paid for damage to the truck, and then to a third party that had a parked unoccupied vehicle.

Q Right. All right, now, but you didn't testify that there was any -- Well, let me back up.

You testified, did you not, that the -- Well, you said -- Didn't Mr. Summers use this case to explain that State Farm strung Logan City out to the point where they would not reimburse them for the worker's compensation claim? That's what he testified to.

A Mr. Summers, in my notes Mr. Summers' allegations were, "My instructions were to not indicate that the insured went to sleep, that he had a sudden illness which resulted in the accident and ensuing [38] deaths," and then he gets into explanation of that.

"I was not given authority, it dragged out to the point that Logan City ultimately dropped the claims that were made, because I represented to the city attorney and to Logan City that it was an act of God, that he had had an illness that did not contribute to or result in the accident."

Q All right. Now, there were two parts of the claim by Logan City. One was the property damage, right?

A Yes.

Q And that you paid, did you not?

A We paid our limits under property damage, yes.

Q All right. And that's what you testified in response to Mr. Summers' testimony, and said he was not testifying truthfully because you had paid the property damage.

A I was saying, he said in here that we were telling him to deny the case. It was an act of God, deny the case. We paid it, all of our limits under property damage, and that certainly wouldn't sustain what he was alleging.

Q Yeah. But there's a difference between a property damage claim and a worker's comp claim, isn't [39] there?

A That's correct. The worker's compensation claim was never made against State Farm by Logan City.

Q Okay. But Mr. Summers says that they had made it. And you never paid it, did you?

A They never sent us a letter anywhere in this file to indicate that they'd made a claim against us for any amount.

Q All right. But you testified that when he said that worker's comp had filed a lien, and you'd paid everything. That had nothing to do with the worker's compensation lien, did it? It had to do with the property damage claim?

A I think all I said was that we paid a property damage, a hundred percent up to our limits.

Q But that isn't what Mr. Summers was talking about. He was talking about their subrogation claim under worker's compensation.

A Mr. Summers --

MR. BELNAP: Excuse me, Mr. Brown. I'll object that it misstates his testimony from the trial transcript, Your Honor.

MR. HUMPHERYS: Who's? His? Mr. Brown's --

MR. BELNAP: Mr. Summers. Thank you, counsel.

[40] Q (BY MR. HUMPHERYS) All right, in any event --

THE COURT: I'm going to overrule the objection and have the jury resort to the jury's memory of what the facts were in the case.

Q (BY MR. HUMPHERYS) In any event, you now admit that State Farm paid nothing toward a worker's compensation claim.

A I never did say that they did.

Q And so -- And Mr. Summers, however, was saying that that was the claim that was being strung out. And you're saying that -- Let me back up. Do you remember reading that part in his transcript, Mr. Brown?

A I remember him saying that we'd told him to deny the claim basing it was on an act of God, and that would be denying all claims.

Q And that was the worker's compensation claim, wasn't it?

A And the property damage claim. It would be all claims.

Q But the property damage claim was paid, but nothing over here, was there?

A They never sent a formal claim against us.

Q At least based on your review of the file?

A That's what Mr. Summers said in his last memo [41] of the file, "We have never received anything, close down the subrogation claim."

Q And that's because he was having conversation with Logan City, he was telling them, "Sorry, we don't cover it because there's an act of God defense"?

A I don't think he'd say, "I'm going to cover it," and pay $10,000 property damage, and then come in later and say, "I'm not going to cover it because it was an act of God." That doesn't make any sense.

Q There's a difference between paying someone's personal injury claims and property damage, isn't it?

A Not as far as when you're talking about liability.

Q Sure. The individual, in a subrogation claim, the insurance company takes the claims of the individual and sues, or can sue on the claims of the individual, right?

A The insurance company, or the worker's compensation bureau, in this case, could make a claim directly against the insurance company.

Q Now, the individual who was injured didn't own the truck. It was Logan City that owned the truck, didn't they?

A The individuals that were injured that were covered under worker's comp?

[42] Q Yes.

A Logan City owned the truck.

Q So it's not at all the same, is it? Logan City owned the truck, the claim for worker's compensation would be filed against the individuals. Or by and through the rights of the individuals.

A What I'm telling you is that liability, whether somebody is negligent or somebody is not negligent, or if you're relying on an act of God, covers all of it. It doesn't cover just worker's compensation and property damage.

Q Well, it would be nice if we had everyone from Logan and a complete copy of the papers so we could go through it in detail, but your testimony is based on what you see in the file?

A My testimony is based on his allegations and what I saw in the file.

* * *

[42] * * *

Q (BY MR. HUMPHERYS) Mr. Brown, we were going [43] to talk about the Carlson case, and we'll do that in just a few minutes after the break. I'd like to turn your attention, now, to some of the things that relate to the Campbell file.

In your knowledge, Mr. Brown, did everyone that worked on that file that was employed by State Farm, were they acting within the scope of their duties as claims personnel?

A Everyone that worked on it as a claim representative, or whatever?

Q Yes, from the claim side of State Farm.

A I would certainly assume that they were, yes.

Q And you've reviewed the file, in fact you were in charge of it, weren't you, early, in the early eighties?

A I reviewed the file, yes. The claim superintendent is still in charge of the file. I was actively involved after the lawsuit was over with.

Q And you found nothing at any point in time where you thought any of the employees of State Farm were acting outside the scope of their normal duties; isn't that correct?

A I can't think of any.

Q Okay. So the answer is yes?

A I can't think of anything where they were [44] acting out of their normal duties.

Q Did you ever notify the Campbells that anything that Mr. Bennett did was outside of the direction and authority that State Farm had given him?

A I'm sorry, would you repeat that?

Q Sure. Did you ever notify, or did State Farm ever notify, to your knowledge, the Campbells that Mr. Bennett had ever done anything which was outside of the authority that State Farm had given him?

A I don't recall any discussion as to that point, no.

Q Mr. Brown, do you know of anything that State Farm did inappropriately as it pertains to the handling of the Campbell file?

A I can't think of an inappropriate action in the handling of that file, no.

Q In fact, no one was disciplined, were they?

A As to the handling of the file?

Q Yes.

A No, absolutely not.

Q Let's look at -- I want to just make sure that this is still your testimony. You give a deposition in 1994, and this is on page 202 of your deposition. Starting on line 11, I asked, "Did you see anything, as you reviewed the file, which would lead you [45] to believe that any of the State Farm employees had not followed the proper policies, procedures, guidelines, and duties that would apply to him?"

Your answer, "I don't recall seeing anything like that, no."

Is that still your testimony?

A Yes.

Q Question, "To your knowledge was anyone reprimanded?"

Your answer was no. That's still your testimony, isn't it?

A That's still my testimony, yes.

Q Line 20. "To your knowledge, was this file handled in the normal course, as other files have been with State Farm?"

And your answer was, "I would say yes." Is that true?

A That's my answer, yes.

Q "Were company policies followed in the manner in which this was handled from the beginning to the time of trial?"

And you then asked me to clarify, "Until I left?"

And my question was, "Until after you left, yes."

[46] And your answer was, "Or whenever. I didn't see any violations of company policies."

Now, you left in what year? 1986? '85?

A January of 1985.

Q '85, okay. The next question, "Did you see any impropriety of any kind as you reviewed the file?"

And your answer was, "I don't recall any, no." That's still your answer?

A Yes.

Q The next question, "Were all of those State Farm employees that were involved in the file acting within the course and scope of their employment with State Farm?"

Your answer was, "To the best of my knowledge, they were." Is that still your testimony?

A I think it's, yes, still the same thing I mentioned a moment ago.

Q You know, I didn't put the rest of that up here as we read it, so I'll just put it up here, even though the jury's heard it.

And if you were handling the file again you'd do the same thing, wouldn't you, Mr. Brown?

A No, if I was handling the file again, knowing the result and the outcome of that case, I certainly wouldn't do the same thing again.

[47] Q All right, but you don't think anything was done wrong, though.

A I think that the intent in that case, we were trying to defend Mr. Campbell to the best of our ability. Mr. Campbell indicated that he was not at all involved, we felt like that the evidence in that particular case did that. Certainly knowing that there was a judgment on it, and the jury apparently didn't believe Mr. Campbell's testimony, and believed Mr. Watkins more than the investigating officers, I'd settled it in a second, knowing the outcome.

Q Sure, knowing the outcome. I think anyone would. I would like to now draw your attention to the contract of 1984, where Mr. Campbell agreed that in order to protect his property from execution that he would bring a lawsuit against State Farm. We've all seen it, I don't want to go into it in detail. You've seen it, haven't you?

A I'm sure that I probably -- No, I'm sorry, I have not seen it.

Q You haven't seen it?

A I have not seen that contract.

Q You're aware of it, aren't you?

A I've been told that there was an agreement made.

[48] Q And you're aware that State Farm's attorney, Mr. Bennett, and State Farm was encouraging Campbells to enter into this type of agreement to protect their assets, weren't you?

A We encouraged Mr. Campbell to try to protect himself, yes.

Q If you had settled before trial, would the Campbells had to have entered into that contract of 1984 to sue State Farm?

A There would have been no trial.

Q There would have been no bad faith action, there would have been no litigation, and the matter would have been terminated back in 1983 or earlier, right?

A Hindsight being twenty-twenty, that's what we would have done.

Q If State Farm would have posted the supersedeas bond for the full amount right after the verdict, would Mr. Campbell have had any need to have entered into the '84 contract?

A We'd been asked by Mr. Campbell's attorney to appeal the case, we appealed the case, and we felt like there was a good issue on it.

Q Please answer my question, Mr. Brown. Had State Farm posted the full bond immediately following [49] the verdict, for the full amount of the entire judgment, Mr. Campbell would not have had any need to go to the Ospitals and the Slushers and enter into an agreement, would he?

A I'm assuming that he would not have.

Q Mrs. Campbell and Mr. Campbell would not be sitting here today if you'd have done either of those two things, would they?

A Clearly if we'd have settled the case they wouldn't have been here.

Q Instead, Mr. Bennett and State Farm encourage the Campbells, in correspondence which we have seen, encouraged Mr. Jensen and Mr. Hoggan and Mr. Campbell to try and enter into an agreement with Slusher and Ospitals to protect them from their, protect their assets from execution.

A Yes, we felt like we would win the appeal when it went up on appeal and this would all be moot. It wouldn't make any difference.

Q I just want to make sure we have that clear. Let's cover a few other miscellaneous items. I think I asked you, as well, in 1994, in your deposition, after having reviewed everything, did you think Mr. Bennett, in all that he did, was acting appropriately based upon your experience with defense counsel. And you said yes, [50] you thought everything he did was appropriate. Do you recall that?

A I don't recall the question, but --

Q That's still your testimony, isn't it?

A In reviewing all of the material and the correspondence back and forth, I felt like Mr. Bennett did an excellent job in trying to defend the Campbells.

Q You were part of the decision, were you not, Mr. Brown, to refuse settlement for the policy limits before trial. That was your claim committee report.

A I was part the claim committee.

Q And you said, "This is definitely a case to defend."

A Given the information we had at that time.

Q That you never reconsidered prior to the verdict, did you?

A There was nothing presented to me that would indicate a reason to change that.

Q And you were part of the decision not to post a supersedeas bond for the full amount immediately following the trial, weren't you?

A Again, I don't recall the discussions on that at that point.

Q Well, you were divisional claim superintendent, weren't you?

[51] A I was divisional claim superintendent. That would have probably been from -- I don't know our procedures or whatever, I can't remember right now.

Q But at least you would have been part of that, wouldn't you?

A I would have been involved with it, I'm sure.

Q Okay. Now, I'd like to cover a few items which are unrelated to the Campbell case. Mr. Brown, while you were divisional superintendent during '80 through '85 when you left, did you emphasize appearance allowances with those claims personnel under you?

A Appearance allowances were in the property damage section underneath the property damage superintendents. I don't recall emphasizing it or de-emphasizing it.

Q You don't recall even trying to aggressively pursue appearance allowances?

A We may have. I can't recall right offhand.

Q We've heard from Mr. Moskalski and Rosa Smith that any mention of appearance allowance was simply an awareness, as opposed to a goal or an emphasis. What was your experience?

A I think appearance allowances, to the best of my recall -- and you've got to keep in mind basically I've been involved with bodily injury rather than property [52] damage through my career -- but in my opinion, on appearance allowances, or evaluations, it has to do with if an insured wanted to take an appearance allowance, we offered that as an option. And if they did, we gave it to them. If they didn't want it, we didn't.

Q So that wasn't something you emphasized.

THE COURT: Just a minute, counsel.

MR. BELNAP: This is beyond the scope of direct, and I mentioned a time factor with you at the bench conference, as well, that I would indicate my objection.

MR. HUMPHERYS: Your Honor, this would be very short, and I think it's very important for impeachment purposes which they have raised in their own witnesses, Mr. Moskalski and Ms. Smith. I think I'm entitled now to explore that for credibility purposes.

THE COURT: In respect to this witness' testimony?

MR. HUMPHERYS: Yes, because he was directly involved with Rosa Smith. Moskalski wasn't here when he was divisional, but it goes to what he said related to State Farm's position regarding appearance allowances.

THE COURT: All right, I'll allow it. Overruled.

Q (BY MR. HUMPHERYS) Now, Mr. Brown, I would [53] like to refer your attention to the memorandum from you to Mr. John Martin. Do you see that, there? And Bill Hopkins, dated December 6th, 1983.

A Yes.

Q And you've got here rough draft, 1984 PP&R.

A Uh-huh.

Q All right. Now, down here under Roman Numeral II. "II, profit, control cost, and increase productivity. Number one, control indemnity payments by."

We've seen an exhibit produced by State Farm, I think it's Exhibit 140 -- I'm sorry, I don't remember the date. Maybe what I ought to do is put that up so we don't have any confusion about that. And then we can clarify exactly what we're talking about. This is Exhibit 138 prepared by the defendant. Do you recognize this, now, as the instructions for completing PP&Rs?

A Yes, at one point. I don't remember if it was in 1983 or four or not, but at one point that was a --

Q I think the evidence was this was in 1995, but I don't know what it was. I have no idea. Do you think it was '93, '94?

A No, you were looking at a 1983 document. I said I didn't know if this was the particular one at [54] that --

Q This is unrelated to that?

A Oh, okay.

Q But I want to draw your attention here to this particular instruction by State Farm. "Reduction of claim indemnity costs, pendings, or expenses should not be included as a goal or measure of job performance, or as a condition for promotion or merit." Now, that's State Farm's current published position. Is that your understanding, or do you know?

A No, that's our current position.

Q All right. Now, let's see what you were doing during this time period in light of the following. Now, under this particular section --

MR. BELNAP: "This time," meaning --

MR. HUMPHERYS: 1984. Thank you, for the record.

Q (BY MR. HUMPHERYS) What you were proposing. You've got "reduce pendings." Now, wasn't it true that, just in that paper we looked at, Exhibit 138, that that was an inappropriate goal to have?

A In the 1994 PP&R goals?

Q Yes.

A You know, I don't have that in front of me. Could I get a copy of it so I can --

[55] Q Sure, I'll give you a copy.

A Okay.

Q And it says, "By strong emphasis write our management staff on pending reduction." Would you agree that that was an inappropriate goal, based upon State Farm's own admission?

A Absolutely not. Pendings are one of the most important things that we have. That indicates the work load of our individuals, and we need to find out if they've got too heavy of a work load or too light of a work load.

Q Okay, let's go to the second page, now, and address what we talked about regarding appearance allowances. You said that you didn't emphasize that much, and that you didn't deal much with property. This is the second page, where it was, under the indemnity control costs. Would you read K as one of your goals?

A "Emphasis or more use of replacement discounts," which that had to do with fire, "like parts, appearance value settlements, et cetera."

Q So you were emphasizing appearance allowances, weren't you?

A There would be an emphasis on it. I think your question was whether or not you strongly emphasize it. It's an emphasis, certainly.

[56] Q It's not just an awareness, isn't it?

A Replacement discounts have saved our policy holders a lot of money over the last few years.

Q Now, you recall pride month, don't you? In fact, you indicated here that you're going to have another pride month in 1984.

A Yes, I certainly recall that.

Q And we'll be going through some of your PP&Rs right now, but do you recall that you continued to emphasize, over and over, and throughout your PP&Rs, that indemnity costs be controlled, reduced in some form or another?

A On the cost and all that? Yes, it's an awareness goal that you look at to compare where you are and where you have been.

Q Isn't it true, Mr. Brown, that you placed heavy emphasis on reduction of average paid claims?

A I don't recall that.

Q Okay, let's start looking at some of your PP&Rs. Back in 1983, do you see here under cost control goals?

A Yes, I see that.

Q It says, "Attain 1983 cost goals as per addendum by, holding superintendents accountable for costs." Doesn't that mean, Mr. Brown, that if a unit [57] superintendent was not controlling their average paid claims, that you would hold them accountable for it?

A We tried to decrease the cost of doing business all the time to keep our premiums in line.

Q And you'd do it by making your superintendents accountable for reducing the cost, didn't you?

A Well, that means they should be aware of it.

Q So making them accountable is only making them aware; is that right?

A They need to be aware of their cost in their units.

Q All right. And then down here, regarding 1983 cost goals, again, part of the same PP&R, you're talking about paid average loss, and you're setting the goals relating to the various coverages, right?

A That's what we would have expected that to be for 1983. If that's the year for it.

Q And isn't it true that you evaluated your superintendents based on how well they performed in reducing average paid claims?

A Absolutely not. I've never seen anyone get a raise or not get a raise or get a reprimand for not making a cost goal.

Q Isn't it true, Mr. Brown, that you received [58] promotions, and that you were evaluated on how well you did in reducing average paid claims?

A I don't think that average paid cost had anything to do with any of my promotions.

Q Do you recall when you were trying to seek a transfer and a different circumstance in 1984, that you prepared a personal resume? Do you recall seeing that?

A Sure.

Q And you recall seeing here where you're listing your various qualifications. Didn't you submit that to State Farm as part of your qualifications to seek your other position that you were seeking?

A Yes, I was, the resume was submitted.

Q All right, let's now look at what you considered to be the most important accomplishments on page 2. Let's read, "Over the past three years, I feel that my most important accomplishments have been in developing improved agency management, claim management relations and cooperation, increasing cost effectiveness by substantially increasing PPE." Tell us what that means.

A PPE is policies per employee.

Q All right. And then, "By meeting or exceeding every cost-related goal." Wasn't that important to you, as one of your most important [59] accomplishments, that you had met or exceeded every cost-related goal?

A It said by meeting or exceeding nearly every cost-related goal. Some were not met, some were met.

Q And yet it was just awareness; is that right?

A To me that's all it's ever been, that's correct. And to anybody else, I think, with State Farm. I've never heard anyone say that they ever were given any special awards or the reverse on cost goals.

Q Let's look now, we have redacted by State Farm some of the other names on a memo from you dated December 20, 1984. Let's see how you were addressing this issue, Roman Numeral II, second paragraph.

"The second goal was a series of actions in an attempt to control our cost picture in Utah. As you are aware, we have a terrible profit picture now, primarily due to our catastrophe losses and our high increases in frequency of losses. I am rather proud of our severity accomplishments, since we did have an 8.3 decrease in BI severity so far throughout 1984."

And you're saying that this was just an awareness?

A And we held the increase in property damage up to 7.5, and an increase of 8.4 in collision. We had increases in some and decreases in some.

[60] Q And you were touting, were you not, the decreases, and trying to justify and explain the increases.

A I was saying that I thought we'd made some ground in that by proper training our people and having a professional claim organization, yes.

Q Okay, let's look what else you said here, starting with this sentence beginning, "Our productivity compares with like divisions and with the company as a whole, and shows that our average costs under the property coverages are much lower than any of our comparative divisions, and much lower than the company as a whole."

Isn't it true that you're justifying to your superior, Mr. Brown, and bragging to him about how you are able to succeed in your cost reduction goals.

A I was pointing out what had happened in the region. Or not the region, in my unit. I wasn't bragging about anything. I would have little to do with the outcome of any of that, anyway.

Q All right, now, let's look after a time period when you went over to Colorado after you were then given the transfer that you were seeking. I'd like to refer to trial Exhibit, page number 197 of Exhibit 151, it's Bates stamped 01559. Look, if you will, with [61] me, right up here at the top, the sentence that begins -- Well, let's see, it's right here, "Our average."

"Our average paid A-100 cost in the springs was over $24,000. This brought the entire section up substantially, since that is where the great majority of the losses were."

Isn't it true that you were giving a response to your superior, and trying to justify why your average paid had increased instead of decreased?

A I was simply pointing out a fact that Colorado Springs had higher costs than the other areas in the section. I wasn't trying to -- Again, that's what awareness is. It's telling people what happened and why.

Q And you said no one's ever been evaluated on that basis?

A I have never seen anyone get a raise or demotion or anything else because of average paid cost.

Q Isn't it true that under this PP&R system, forty-five days before raises and, or not promotions, but raises are determined at the end of each year, these PP&Rs are supposed to be evaluated by the person's immediate supervisor?

A That's normally the procedure, yes.

[62] Q And that raises are determined partly on that evaluation, aren't they?

A Raises -- We look at that as being one of the factors. We look at all factors on an individual when you're talking about a raise. The PP&R is part of that.

Q All right. Let's look, now, for example, in 1991. This is your PP&R, and this is a summary of your evaluation, and that was performed by your supervisor, wasn't it?

A This would have been done by my supervisor, yes.

Q And there wasn't a lot done in terms of your evaluation, at least in written form, but let's look at one of the three things mentioned.

"Bill, through his unit, has been very active in supporting our goal of trying more cases to attempt to get control of BI indemnity costs. Bill's results have been very good."

Isn't it true that you are evaluated on how well you control indemnity costs?

A I think, again, I think he's just pointing out something, there. We were trying more cases, juries have been telling us for years at that point, because we weren't trying enough, because we were winning nearly [63] all of them. And that's just saying, yeah, we were trying some more cases, but we were still winning most of them, I would get from that report.

Q All right, well then, let's look at some more of your PP&Rs if you still don't wish to concede the point. I'd like to now look at your year 1992. I don't have the front page of it.

MR. BELNAP: Your Honor, I'd move to strike counsel's comment regarding the point.

THE COURT: Sustained. Motion granted.

Q (BY MR. HUMPHERYS) Okay, this is 1992. And let's look at one of your goals, Mr. Brown, in 1992. This is trial page 235 of the same exhibit, Exhibit 151. Now looking at the very top one, "Hold indemnity costs for BI to the cost of living index percentage increase, or less." Now let's look down here toward the bottom. This is your review, isn't it, of the goals?

A This is a part of a part, here.

Q You're saying, "I feel very good about our unit's accomplishments." Isn't it true you were evaluating what goals you had?

A That's a general statement, it looks like.

Q Okay, starting right down here where it says, "Our indemnity."

"Our indemnity payments have decreased [64] substantially this year. We met our allocated loss adjustments and other budget goals. The unit morale is high. We had a very good corporate operations review."

Mr. Brown, isn't it true that you have continually reviewed your subordinates on the basis of how well they reduce average paid claims?

A No, that's absolutely wrong. Our average paid costs go up and down in a unit each year. And it's determined more likely than court decisions, if it comes out in changes in the law. There's a lot of things that go into determining what the average paid cost is.

Q You had the same goal in 1993; do you recall that?

A They very well could be, because again, we're going to just state what's happening in the area.

Q All right. Page 255, or trial page 255 of the same exhibit. Under D, "Indemnity goals." Do you see, under paragraph 2, your goal?

"Maintain present BI indemnity costs at present level or less."

And then your comment, "Indemnity costs are continuing on a downward slide. Through three quarters of 1992 our average was $21,140, and this is down to $18,050."

[65] You're succeeding in your goals, aren't you?

A The cost has gone down, as that points out, there. But the reason for that is that we didn't have any real large verdicts. We didn't have any real large serious injury cases. When you don't have those, the average paid is going to decrease.

Q All right, Mr. Brown. Do you agree that these reduction goals are inappropriate?

A I think that the goals right now, just simply because, what I was saying, you have very little control over those, there's just no reason for them, and I think that's what they did in '94 or '95, whenever this was.

Q Do you recall emphasizing, while you were here in Utah, cost savings, and having cost savings reports?

A I think any business has to look at the cost of doing business. Certainly we look at that.

Q And cost savings reports were done here in Utah, as well, weren't they?

A What kind of cost savings reports are you talking about?

Q You just told me that you were aware of them. Are you not aware of them?

A I said I'm aware that any business has cost goals to where you try to control your costs. Any [66] household has to do that.

Q Do you remember preparing cost saving reports on how much was saved in using appearance allowances?

A I don't recall those, no.

Q Do you remember in the memoranda that they were talked about in the minutes of meetings, for example? If I put up the Bird minutes of meetings once more the jury's going to kill me, so I'm not going to do that. But you don't remember these cost savings reports?

A I remember there were some fire company, to where, if we could have replacement cost services, which is outfits that you go through, if you lost a watch in a fire claim, it was stolen, and you were going to pay for it, and you had a Benrus watch that was lost, there were discount sources we could go to, to replace a new watch for the old one. And that's

what we tried to do. And it was called a cost savings, a replacement cost savings. Yes, we had those. And they're -- Everybody's benefiting.

Q You testified last Friday, Mr. Brown, that to your knowledge the Excess Liability Handbook had never been used, you were unfamiliar with it and so forth.

A Yes, I don't recall ever seeing it before this trial.

[67] Q And you indicated, as well, as I recall, that that pertained to the fire company as far as you could tell, and not the auto company?

A Yes, it was my understanding that that was a fire company document.

Q I think that's been the position of many of the people here. I would like to have this clarified once and for all so we can put that matter to rest. I'd like to refer to a deposition by Mr. Macherle. Who is he, by the way? Or who was he during the eighties?

A Bob Macherle was a claims vice president.

Q He was the top person in claims, wasn't he, in State Farm?

A I think in the auto side.

Q Right. All right, I'd like to refer to a deposition that he gave in the case of Schlossberg versus State Farm Mutual. The date was February 10, 1989.

Line number 17. "Let me ask you this. Given the fact that -- " And by the way, I'll indicate that they are discussing the Excess Liability Handbook.

"Let me ask you this. Given the fact that all of the instructions in this book and guidelines relate to how to handle, defend, and settle the auto case, can you envision a situation in which this [68] document would be of use to any fire and casualty adjuster?"

His answer, "Well, yes."

And then the next page. "How?"

"Yeah. Now, let me say that it appears -- Let's go to part 5. This was taken from an auto company outline that we used in training our claim superintendents."

Question. "It's very much like a portion of the claim superintendent's manual, right?"

And that was Article 14 of the claim superintendent's manual they were talking about. And his answer, "Right. So I recognized that. So the fire company apparently took that along with the speech by Ross Hume and made it part of their manual."

Now, Mr. Brown, you testified, as I recall, that the Excess Liability Handbook had nothing to do with the auto company, didn't you?

A I testified that I had not seen that manual until this trial.

Q The vice president of claims said that he took that from the training material of the auto company, didn't he?

A I got the impression from reading that he probably didn't know where it came from. He said [69] apparently, and a few other words on that. I don't know what he thought. I know that I hadn't seen it prior to this trial.

Q And you didn't give it to Ms. Bird to look at and review when she became a superintendent, either, did you?

A I didn't have it.

Q She said you gave it to her.

A She was mistaken.

* * *

[70] * * *

THE COURT: Okay, we're back on the record. And Mr. Humpherys, I understand you want to bring something to the court.

MR. HUMPHERYS: The only thing I was going to do, Your Honor, is, in light of the concern, I have taken a pair of

scissors and cut off the overhead to exclude all reference to the law firms who have been involved. So there's no reference or identity at all to them.

And what I intend to do is to show one of them on the screen, and then show him two others and say, "Aren't the other two just like it? They say 'no coverage.'" And that'll essentially be it.

MR. BELNAP: Judge, once again, this is a collateral issue, we're two hours into this witness on cross exam, with three hours last Friday, on areas that are beyond the scope of direct. And Your Honor indicated at bench that we could either try to work out a stipulation, or that he could use one complaint from a law firm other than Strong and Hanni.

And at the break I told Mr. Humpherys to go ahead and use the complaint from the other law firm. [71] And I just think it's overkill on a collateral issue that we don't think ought to even be gone into. And I respect Your Honor's ruling, but it ought to be limited to the one complaint from the other law firm, and moved in and moved out of so we can get on with this case.

THE COURT: I'm going to allow Mr. Humpherys to proceed, with the suggestion that we do it as quickly as possible, and that we don't need -- Anything you can take out of what you've suggested to the court to get the point made succinctly, I think the less the better on this point. Let's bring the jury in on that.

* * *

[74] * * *

Q (BY MR. HUMPHERYS) Mr. Brown, we're going to cover one additional item that we reserved until after the break. Remember Friday when we were talking about the Carlson case, and the fact that you had, in your claim committee report, contrary to the directions of your counsel who said there

would likely be coverage, contrary to Mr. McGlinn, who was saying there should be coverage extended, and Mr. Summers, who said coverage should be extended, your claim committee indicated that you would deny certain coverages and then have a declaratory judgment as to others. Remember that discussion we had regarding that?

A Yes, we were talking about the declaratory action.

Q And I asked you, "Isn't it true that a declaratory judgment action is where State Farm sues their insured and tries to get a ruling that there is no [75] coverage?"

And you responded by saying, "Well, no, what we do is we just say to the court, 'Well, here's a question, you decide it for us,' kind of a neutral setting."

And I was suggesting to you, "No, it's where State Farm tries to get an order of non-coverage." Do you recall that discussion?

A Yes, I recall that discussion.

Q All right. Now, I would like to show you some of the declaratory judgment actions filed by State Farm to see if you still have the same opinion. Now, this has been cut off for a reason, and it's not relevant, but I want everyone to know that there's a purpose behind it. And it wasn't done because I'm trying to hide anything.

Here is a complaint for declaratory relief that was filed here in a Salt Lake court, State Farm Mutual versus various people. Now, on the last page, the "wherefore," that's called a prayer of a complaint. Remember we kind of touched on that last Friday what a prayer is? Kind of a funny name is --

A I know what a prayer is, yes.

Q So here's State Farm praying. "State Farm prays." Now this is the relief that's sought from the [76] complaint, right? That is the person who files the complaint, this is where he says what he wants to have done. Correct?

A I'd say that's accurate, yes.

Q "State Farm prays that the court declare that the policy does not afford any liability coverage to Mr. Bodell," I think, who was the insured, "and that State Farm neither has a duty to defend nor indemnify Mr. Bodell in the underlying wrongful death action."

Now, remember, Mr. Carlson was being faced with a lawsuit by all of these claimants, the Boxes, who had a wrongful death claim, the McCassertys, who had personal injury claims.

And you had reached a decision that you were going to file a declaratory judgment action against Mr. Carlson. And wasn't it for the purpose to have the court declare that the policy did not cover the Carlsons?

A Counselor, we've got three choices on any case when we've got a question of coverage. We can automatically pay it, we can deny them immediately, or we can ask the court, through a declaratory action, to make a judgment on it. And this is what we were doing in this case. Obviously there has to be some form done in the proceeding. We didn't deny it.

[77] Q And the form is that State Farm takes the position there is no coverage with the court, right?

A In some cases that's what is used, yes.

Q Isn't that usually the situation?

A And probably most cases, yes.

Q All right. For example, another one here, State Farm Mutual versus whoever, complaint for declaratory relief, again, this was in the Salt Lake County court house filed. The prayer of the complaint State Farm says, "Wherefore plaintiff prays," plaintiff would be State Farm, "prays for judgment against defendant and each of them, declaring that the insurance policy in question does not provide coverage for said defendant, that plaintiff has no duty to defend the subject lawsuit on behalf of Mr. Strong, Volkswagen, Peugeot, et cetera, nor to adjust any claims which

Mr. Lavadour," who was the claimant against these people, "may have to pay."

Again, the same relief that's being sought by State Farm, right?

MR. BELNAP: Your Honor, this goes beyond the scope of what the court allowed.

THE COURT: When he finishes this case.

Q (BY MR. HUMPHERYS) This is similar to that, isn't it, where State Farm tries to seek an order from [78] the court that they don't have coverage.

A Counselor, again, if we wanted to deny the case, we would simply deny it. This is a form that you use, a declaratory action, as you know, that says we are asking the court to make a decision as to whether there is or is not coverage.

Q In the meantime, Mr. Carlson would have to expend attorneys fees and endure the litigation with State Farm in the meantime, right?

MR. BELNAP: Your Honor, I object, this is repetitious now, and beyond the scope.

THE COURT: Overruled, but I think we've reached the point.

Q (BY MR. HUMPHERYS) Right?

A Go back to your question, if you would, please.

Q In the meantime, Mr. Carlson would have to defend himself in this lawsuit by State Farm in order to establish coverage, correct?

MR. BELNAP: Your Honor, may I also interpose an objection, that it's undisputed in this case, there was never a lawsuit filed. So the question is without foundation and irrelevant.

Q (BY MR. HUMPHERYS) All right, then let me preface it this way, Your Honor. Isn't it true that you [79] were threatening to him a declaratory judgment action. You had that in a letter to him, didn't you?

A We weren't threatening anybody. We were saying that would be a possibility.

Q And you explained that to his attorney, that you were going to file a declaratory judgment action, didn't you?

A Tom McGlinn wrote him a long letter, I think, and stated why.

Q And isn't it true that out of the threat of that lawsuit, Mr. Carlson was forced to give up his PIP claim for over $10,000 to avoid his expense of defending himself in that action by State Farm?

MR. BELNAP: Your Honor, I'm going to strike "threat," and also this was repetitious. This was fully gone into, and renew my objection on the time.

THE COURT: Reframe the question, and this is the last question on the subject.

MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Isn't it true that the reason Mr. Carlson was willing to give up over $10,000 of his own claim for PIP benefits was because of your notice to him that you were going to file a dec action and force him to defend himself through that expensive process?

[80] MR. BELNAP: Your Honor, the question assumes facts not in evidence, that there was a $10,000 claim. There was none.

MR. HUMPHERYS: Your Honor, we put up ample evidence Friday afternoon regarding that.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Isn't that true, Mr. Brown?

A I'm sorry, I need for you to state that again.

Q All right. Isn't it true that Mr. Carlson was willing to give up his claim for PIP benefits because State Farm had given him notice that they were going to sue him in a declaratory judgment action and force him to incur the expense in defending himself to obtain coverage?

A No, I don't think that's why he did that. I think he was getting the coverage from Blue Cross Blue Shield, and there was an agreement that State Farm would accept subrogation from Blue Cross and Blue Shield if they did that.

Q Do you recall reading the release where Mr. Carlson had to give up all rights, claims, causes of action, of every kind that he may have against State Farm?

[81] A And in the same agreement it said that State Farm would agree to acknowledge the claims of Blue Cross Blue Shield if they presented those. So he was going to them, and they could subrogate against State Farm.

Q All right. We have no further questions.

MR. HUMPHERYS: Your Honor, we would like to state, however, that we have still not had a full opportunity to review those thirty boxes of files, and we would like to reserve any additional cross examination, or right to present additional evidence if we feel it needs to be, given what may transpire, since we just received notice we could look at those boxes the first of last week.

THE COURT: You've made your record, counsel.

REDIRECT EXAMINATION BY MR. BELNAP:

* * *

[84] Q I want to go to a different subject for a minute, and we'll come back to the coverage issue when I talk to you about the Carlson case in a few minutes. Mr. Brown, Mr. Humpherys asked you about some of your PP&R goals, and he put up on the board a section from your personal resume, and I want to ask you about that for a minute.

These goals that were put up on the board were goals that you made as a divisional claim superintendent; is that correct?

A In the resume?

Q Well, at the time that you were a divisional claim superintendent.

A Yes, I was a divisional at that time.

Q And the jury's heard about the fact that a divisional claim superintendent in Utah at that time would have supervision over several claim units. Is that right?

A That's correct.

Q Now, as a divisional, did you have business responsibility for the costs and the operation of this division?

A Yes, at that time I had the entire state, and that included all of our buildings and company cars, and electricity, and like you have in any business.

[85] Q And is one of the categories of cost in a claim operation what you're paying on claims, Mr. Brown?

A That would be one category, yes.

Q Now, as a person that was responsible, at the time that these were shown to you as a divisional claim superintendent for costs, can you tell the jury whether or not you think it's inappropriate for you to be aware of, and attempt to control the costs in the division?

A Yeah, I think that any time you're running any kind of an organization, you have to be aware of the cost of what's going into making up those costs in your business.

Q Now, when you indicated your career accomplishments, you said that you've been involved in developing improved agency management. Do you recall that?

A I think agency management relationships is what that would have been.

Q Okay. You talked about, that you'd been involved in improving claim management relationships and cooperation.

A Yes.

Q Did that have anything to do with forcing someone to pay less on a particular claim?

A No, absolutely not. When you're evaluating a [86] case, you evaluate every single case based on all the facts on that particular case, all the injuries, the liability, everything on that case. You don't look at a group of claims and evaluate the case. They're all different.

Q Now, you went on to say that you've been effective in increasing effectiveness by increasing PPE, policies per employee.

A Yes.

Q Is that a staffing analysis of whether or not you have the right amount of employees?

A Yes, that's strictly, it's how many policies that you have per employee. And if you have the same number of employees and the number of policies increase, then that amount increases.

Q Then you stated "By meeting or exceeding nearly every cost-related goal." What are the costs that are faced by a divisional claim superintendent? Just categories, quickly, because we want to move on.

A To begin, it's the entire operation. It's everything from buildings to salaries to claims to cars to whatever it might be.

Q Mr. Brown, if, as a divisional, you don't have some idea and control over costs, what is the effect of that in terms of the product that you are [87] offering to the public?

A It's going to cost too much.

Q I want to ask you about another PP&R in 1985. We were looking at one that was '84, I think. And this indicated that you were going to look at indemnity costs, again, as one area that you wanted to look at in '85.

And trial page 164, counsel, that I'll represent to you this indicates, Mr. Brown, that you're going to "Place

emphasis on quicker, more complete medical investigation." Do you think that's appropriate, or inappropriate?

A No, I think it's very appropriate. Basically what that meant was to enable someone to settle a case when the claimant was ready to settle, rather than have to wait until they're ready and then obtain the information.

Q It went on to indicate that you had a goal that you "would attempt to train for early settlement, earlier settlement attempts," it says, quote-unquote.

A That kind of relates to the thing I'm just saying. You want to be prepared to settle when the claimant is ready to settle the case.

Q You indicated "more use of structured settlements."

[88] A Yes.

Q You indicated "more use of Audatex"?

A Yes.

Q "More use of replacement discount parts and equivalent parts, and discount sources for fire claims"?

A Right.

Q "Continue to develop claims personnel through a well-planned training schedule administered by claims superintendents."

A Certainly. A well-educated claim force is, I guess, your best way to control costs, because you've got a person that's very good in medical, very good in the law, and they're not making a lot of mistakes in those areas.

Q "Continue an auto and fire reinspection program." What is that to do? Is that to check to see if claims have been handled properly?

A Well, it's to check and see if the estimates have been written properly and thoroughly in the fire side of it. It was to check on the type of dwelling that you might be insuring.

Q And then your last area was proper staffing. Does that have an effect on expenses?

A Certainly it has an effect on expenses and cost.

[89] Q Now, Mr. Brown, are you embarrassed to say that, as a divisional claims manager, that you were aware of and attempting to control costs?

A No, I'm not. That's part of your job.

Q Now, Mr. Humpherys put up on the board the change that was made in 1994 from the Haines and Coffey memo, and the fact that for Exhibit 138 it says, "Reduction of claim indemnity cost, pendings, or expenses should not be included as a goal or a measure of job performance, or a condition for promotion or merit pay increase."

Do you remember reading that?

A Yes.

Q Has that ever been a condition for you, or any of the employees that you've supervised, in terms of their working at State Farm?

A Again, not as far as it says they're a condition for promotion or merit pay increase.

Q Have you ever instructed any of the people that you've supervised, Mr. Brown, that they should pay less on a file because of your awareness and consideration of costs in the division?

A Absolutely not. That would be absurd. Again, you've got to evaluate every single case based on the facts of that case.

[90] Q Now, you were asked a question about some goals that you had in Colorado Springs where you indicated that your average paid cost was up to a range of approximately $24,000. Do you recall those questions?

A Yes.

Q Did you indicate in that statement that that cost had gone up that year because we had a, quote, "great number of large cases in 1986"?

A As I recall, that would be right, yes.

Q As those costs have gone up and down in your career, have you ever been disciplined, or ever disciplined anybody for that?

A Absolutely not.

Q Do you think it's possible, Mr. Brown, as a manager, to try and make a more efficient operation that runs on a more cost-effective basis?

A Well, I certainly hope so, because that's what all the people in management are trying to do, is to run an efficient and fair shop.

Q I want to go to another area quickly, Mr. Brown. My Humpherys asked you about whether or not the 1984 agreement would have been necessary. Do you recall those questions?

A Yes.

[91] Q Are you aware of what the policy limits were that Mr. Campbell had purchased?

A $25,000 for one, $50,000 for two or more.

Q Did State Farm ultimately pay six times the policy limits, and obtain a complete satisfaction of the judgments, Mr. Brown?

A Yes.

Q And was that done before this lawsuit was filed?

A Yes, it was.

Q To your knowledge, did the counsel of the plaintiffs in this case ever indicate to State farm that if a bond was filed, this case would not be pursued?

A On this case?

Q Yes.

A No.

Q Do you recall from our discussion on Friday, Mr. Brown, when I put up some letter for you to look at, and some correspondence, and an agreement regarding whether or not a bond would be necessary?

A Yes, I vaguely on there -- I couldn't quote you word for word.

* * *

[93] Q Okay. Mr. Brown, I want to talk to you just briefly about the Gos case that Mr. Humpherys asked you about twice.

MR. BELNAP: I need to just find a note, Your Honor, if you could give me just a moment.

Q (BY MR. BELNAP) Mr. Brown, do you recall Mr. Humpherys, on Friday, asking you questions concerning Idaho law?

A Yes.

Q Do you recall Mr. Humpherys representing, at the request of this judge, if he could make a good faith -- Let me just read this to you.

Mr. Hanni -- This is on page 237 of the trial transcript. Mr. Hanni objected to the question, and his objection was, "There's no establishment what Idaho law was, here. Nobody said what it was, whether it was pure or whether it was comparative negligence like Utah."

Judge Bohling indicated, "Well, let me -- Counsel, do you have a reasonable basis?"

Mr. Humpherys said, "He can say it's not true, or he can say he doesn't know."

Judge Bohling said, "For purposes of putting the question, can you represent to the court you have a reasonable basis for the question?"

[94] Mr. Humpherys indicated, "Yes, that Idaho had a pure comparative negligence at that time." Do you recall his representation on that?

A Yes, I do.

Q Now, when we talk about pure comparative negligence, such as represented on Friday, if you have from zero to 100 percent, in pure comparative negligence, if the plaintiff happens to be 90 percent, can they still recover part of their damage?

A They could collect 10 percent.

Q All right. After Mr. Humpherys represented that Idaho had pure comparative negligence at that time, did you do some checking to see if that was the fact?

A Yes, I called --

MR. HUMPHERYS: Your Honor, this is repetitious. I've stipulated that I'd only had four days to review all of these files by then, and I was giving my best memory, and I was asking whether he knew whether there was Idaho law or not on this subject. And I gave the best judgment I could.

And I've now clarified that, and he's now rehashing something that doesn't apply by stipulation. And I've agreed to that.

MR. BELNAP: Your Honor, that's a speaking objection, and this was gone into on Friday, and I have [95] a point that I want to make, here, on this point.

THE COURT: Overruled. Make it quickly.

Q (BY MR. BELNAP) For purposes of pure versus comparative negligence, have you determined, Mr. Brown, that for purposes of the law, both Idaho and Utah have a law that the plaintiff has to be less than 50 percent negligent or they can't recover?

A That's correct. We call it a greater-than statute.

Q Are you aware, Mr. Brown, that at the time of this accident in the Gos case, that Utah had a guest statute, as has been discussed?

A Yes.

Q Are you aware, Mr. Brown, that under Utah's guest statute, if the driver was under the influence of alcohol, the guest statute did not apply?

A I had forgotten that last week.

MR. HUMPHERYS: Your Honor, I have to object on the leading part of this. We're getting into substantial --

MR. BELNAP: I'd be happy to rephrase it, Your Honor.

THE COURT: Rephrase it.

Q (BY MR. BELNAP) Mr. Brown, can you tell the jury, under Utah law, while it had a guest statute -- [96] Which it no longer has, as I understand, but at that time did it have a guest statute.

A Yes, it had a guest statute.

Q And if a driver of a vehicle was drinking, what effect did that have on a guest statute?

A I think that really kind of knocked out the guest statute.

Q So in terms of whether or not this case was done under Idaho or Utah, was the effect of the analysis the same?

A When you add everything up, the analysis would have to be the same.

Q I next want to go to a case that Mr. Humpherys talked about on Friday called the Tew case. Do you recall that?

With respect to this Tew case, just to get back to an understanding of the facts, and the discussion on Friday, Mr. Brown, do you recall the allegations of Mr. Summers on this case?

A Yes.

Q Can you tell the jury what his allegations were?

A I've got that in my notes, "That the insured told to seek his recovery from the adverse, since they were primary and responsible. I expressed to the [97] superintendent that this was wrong because there were horrendous bills that were already accumulating, and that the liability coverage of the southbound vehicle were inadequate to take care.

"Nonetheless, don't offer, don't even infer the availability of those coverages." And then -- Excuse me, my notes go to another page.

"I had known Mr. Tew for years, and I went to him and said, 'I'm sorry, I can't offer you benefits unless I have a written demand from you.'

"He said, 'Why? I'm a policy holder.'

"And I said, 'Well, I have to have that before I have any authority.'

"He then provided me with a written request for medical benefits and the death benefit under the provision of his own policy. This was still resisted in that I was not permitted to give him any lost income allowance for himself or his wife, nor was I permitted to give him any loss service for himself or his wife, both of which were still either hospitalized or under a physician's care.

"He threatened to complain to the insurance commissioner and threatened to bring suit. He had an associate counsel, I believe, initiate the proceedings of a legal action. They finally broke loose and paid [98] that which he was entitled to from the onset of the involvement."

Q All right. I want to lay some foundation, having gone through those allegations of Mr. Summers, for the discussion that took place on cross examination on Friday.

Mr. Brown, do you recall from reviewing this file if there was ever a dispute, or a situation from the file, where there was any evidence that, according to Mr. Summers, he had to fight for benefits, and only got those after Mr. Tew threatened action?

A The evidence in the file indicated that as soon as we got the medical bills in, we paid them. There's no evidence of any delay whatsoever.

Q Let me just put up here on the board a letter. And this accident happened on November 25th; is that correct?

A Yes, November 25th.

Q Okay, this is a letter from Mr. Tew's attorney, is it not, December 15th, 1981?

A Yes, attorney Jorgensen.

Q To Mr. Summers. Does it indicate that he has just received the statements relating to the accident?

A Yes, and I -- That would be the hospital bills.

[99] Q And does it indicate that he is enclosing a copy of those statements for each of the family members?

A Yes.

Q And then I want to show you, Mr. Brown, this is December 15th, I want to show you a check dated three days later, in the amount of $8,800, $8,804; is that right?

A Yes.

Q And we talked about this on Friday, the codes over on this side. Are these final or partial payments?

A Well, the top four are partial, code number 2, the death benefits on the last two.

Q Okay. Okay, Mr. Brown, from reviewing the chronology that you see, there, is there any evidence in the file that there was a fight going on, or an allegation of any kind that, "If you don't pay because you're depriving us, we're going to sue you"?

A No, absolutely not. He apparently sent the bill about, the bills three days before we paid them.

Q Now, approximately a week after that, is there another letter, December 23rd, 1981?

A Yes, from attorney Sorenson.

Q And does it indicate that he's received some more bills, and that he's passing those along?

A Yeah, he just mentioned we'd paid the limit [100] on Roger already, so he wasn't sending any more medical bills for Roger.

Q Were those additional bills paid?

A Yes, they were.

Q Was there any indication in the file that Mr. Tew had to threaten?

A No, there absolutely was not.

Q Now, Mr. Brown, attached to the letter was a P.S., was it not?

A Yes.

Q Indicating the bills had, in fact -- Well, does it indicate the bills had been paid?

A Yes, it indicated they'd received the payments.

Q Now, Mr. Brown, I'll represent to you that Mr. Humpherys claimed on Friday, on page 62 of the court transcript, that I had misrepresented Mr. Summers' testimony in the following statement to this court.

"Mr. Humpherys. Your Honor, I object, that misrepresents Mr. Summers' testimony. He said that he eventually paid them, but it was because he was fighting to get them paid with resistance from State Farm, and that is an incorrect representation."

We then had some discussion, and I indicated to him, "Counsel, you're misrepresenting, and you know [101] it." Do you recall that discussion?

A Yes, I do.

Q Mr. Brown, from this file that I've showed you, with respect to Mr. Summers' representation, according to Mr. Humpherys, that, quote, he was fighting to get them paid with resistance, is there any support for that in this file?

MR. HUMPHERYS: Your Honor, hold on. I object because he -- We were talking about the representations of Mr. Summers' testimony, not the file. And that improperly characterizes what that conversation was, and I object to that.

MR. BELNAP: Your Honor, the questions are right here. I can go through them one by one on the trial transcript. That shows that what I was representing to the witness was true, and supported by what I've put up here on the board. If we want to take the time I'll go through these pages.

MR. HUMPHERYS: The difference is, the exchange between Mr. Belnap and myself related to testimony of Mr. Summers. And I said he had not adequately represented Mr. Summers' testimony.

Now he is using that and asking Mr. Brown to say, "From the file was Mr. Humpherys correct?" I didn't refer to the file. I was referring to the [102] testimony given. And so that's where it is improper. I'm happy to have a bench conference, rather than speaking objections on this.

THE COURT: Well, is it possible that we can now frame -- I mean both of you have stated your position. The jury had testimony both from the file and from the transcript before it. We know which each side believes. Now just ask the question, which doesn't go to anything more than what the facts are, and we'll let the jury decide what they think the record was that the two of you have some controversy about.

MR. BELNAP: I'd be happy to, Your Honor.

Q (BY MR. BELNAP) My question to you, Mr. Brown, is, if it's represented by someone in this case that Mr. Summers' position was that these were eventually paid after having to fight to get them paid, is there any support for that in the file?

A There's absolutely no support for that in the file.

Q The check that was paid three days after the letter from the attorney that submitted the bills, whose handwriting was that, and who signed that check?

A Ray Summers.

Q Now, in the state of Utah, Mr. Brown, when bills are received by an insurance company, how many [103] days do they have to process those bills?

A I believe at that time there was thirty days.

Q And how many days did it take to pay these bills after they were received, according to what we put up on the board?

A The maximum amount of time, it would have been three days.

Q Mr. Brown, I next want to move to the Carlson file.

Mr. Brown, back on the Tew case just briefly, after having paid all these bills that we put up on the board, did there come a point in time where the insurance company for the automobile that hit the Tew family offered to pay their limits?

A I believe there was, yes.

Q And as we talked on Friday, State Farm had paid out approximately $17,000 in medical expenses; do you recall that from the file?

A That's about right, yes.

Q Now, at that time under the law did State Farm have a right to be subrogated, or receive those payments back?

A Yes.

Q Now, ultimately did the attorney for the Tews ask State Farm to waive their subrogation of $17,000?

[104] A Yes, they did. He did.

Q And in the context of that, was there some letters that went back and forth?

A Yes.

Q And ultimately did State Farm waive that entire amount of money?

A Yes, we did.

Q Who did that benefit?

A Mr. Tew.

Q Okay. Going to the Carlson case, Mr. Brown, can you tell the jury what the allegations Mr. Summers made about this case, with respect to what he was told to do?

A He said -- Well, he said, "Technically there were three different accidents, I reported them.

"And told him we had a very severe exposure, and he said, 'Do nothing on the file. It is an intentional act. The boy intentionally tried to do harm. There is no coverage.'

"I said, 'Wait a minute. The boy is ill. He was hospitalized for a mental breakdown. He was not cognizantly aware of what he was really doing.'

"He said, 'Follow my instructions.'

"I was instructed not to even offer the PIP benefits under each of the three instances. I was told [105] not to discuss with the insured or anyone else relative to the involvement of the accident, I was told to remove from the file the photographs of the accident scene, which were never included in the file. The diagram that was prepared, to my knowledge, was never included in the file.

"I was also told not to offer my opinion as to the possibility of coverage, but to downplay, withhold the evidence from the insured, and in particular, not to disclose or divulge any content to the claimants that were involved in the fatality."

Q Now, Mr. Humpherys -- Or excuse me, one question. Did he say he was told to remove photographs and his diagram from the file?

A Yes.

Q Were those in the file?

A Yes.

Q Mr. Brown, there's been some discussions about the Carlsons having to give up a claim for personal injury protection for the medical treatment to Thad, the boy that jumped in front of the semi. Do you recall that discussion with Mr. Humpherys?

A Yes, I do.

Q In the state of Utah, under the no-fault statute of the state, are you familiar with whether or [106] not there are some exclusions from coverage?

A Yes, there are.

Q And is one of the exclusions for coverage when it has occurred to an injured person, if such person's conduct contributed to his injury under any of the following circumstances, subparagraph I, causing injury to himself intentionally?

A Yes, that's part of the law.

Q That's part of the law? Was the Carlson boy charged with two counts of second-degree murder as a result of this accident?

A Yes, he was.

Q Is part of the law also that no-fault, or PIP coverage won't apply while committing a felony?

A Yes.

Q Did the county attorney make that decision -- Strike that.

MR. HUMPHERYS: Your Honor, I think we need to know what this witness really knows or not, rather than what Mr. Belnap continues to lead. Those charges, I hope you get into what happened to those charges, because -- I mean I don't want to make a speech.

MR. BELNAP: I'm going to object to a speaking objection.

THE COURT: I'm going to sustain the [107] objection, lay some foundation.

MR. HUMPHERYS: And I think we have to have this witness' memory and testimony, not Mr. Belnap's.

THE COURT: I sustain the objection on leading questions, as well.

MR. BELNAP: And I would object to a speaking objection, Your Honor.

Q (BY MR. BELNAP) Under State Farm's policy, Mr. Brown, is there an exclusion for causing, under no fault, is there an exclusion for causing injury to yourself intentionally?

A Yes, there is.

Q Now, there was also some discussion on Friday, Mr. Brown, relative to whose no-fault coverage was primary. Do you recall that? Whether State Farm had the coverage for the Thad Carlson boy jumping in front of the semi?

A I think there was conversation regarding whether or not that would apply, yes.

Q Now, if Mr. Carlson is hit by a semi truck, as a pedestrian, whose coverage, under the state of Utah, would be primary for no-fault?

A It would be the truck's coverage.

Q Okay. Did Mr. Humpherys ask you about that in the questions that he asked?

[108] A I don't recall he did, no.

Q Now, there's been some discussion about declaratory judgments, and a decision was made initially in this case to consider filing a declaratory judgment action to determine if this was an intentional act and covered, or whether it was an accident because the person was insane.

A Yes.

Q Do you recall that?

A There certainly was.

Q Did State Farm ever file a declaratory judgment action?

A No, we did not.

Q Now, Mr. Brown, under the laws of this state, does it provide that one of the things that Judge Bohling and other district court judges have, is the right to declare rights, status, and other legal relations, whether or not further relief is or could be claimed?

A Yes.

Q And as an insurance company, can you tell the jury whether or not you were concerned whether or not there was coverage?

MR. HUMPHERYS: Your Honor, this question is leading.

[109] MR. BELNAP: I'd be happy to rephrase it, Your Honor.

THE COURT: Rephrase it.

Q (BY MR. BELNAP) What were you concerned about as an insurance company?

A We wanted to know whether or not, in this particular instance, there would be coverage under the, well, all of the coverages under the policy.

Q Okay. Now, ultimately were the policy limits paid, Mr. Brown?

A Yes, they were.

Q Do you recall, in reviewing this file, this Carlson file, there being a release document that was executed?

A Yeah, there was a release and agreement, I believe.

Q Do you recall reading any correspondence from Mr. Bennett about this release?

A The mutual release and settlement agreement.

Q Okay. Do you recall whether or not Mr. Bennett indicated, one way or the other, whether this release agreement was drafted by the Carlsons' attorney, and sent to him?

A I believe that it was. I can't recall specifically, though.

[110] Q Okay, we'll find that in a minute. The release agreement provides that -- With respect to medical expenses, what does it provide, Mr. Brown?

A It's under paragraph number 4 it says, "The Carlsons expressly agree that they personally shall not file any lawsuit for the purpose of compelling State Farm to pay for any medical expenses incurred by Scott G. Carlson as a result of the November 17, 1980 accident, nor will they file any lawsuit to compel State Farm to pay the other no-fault benefits which Scott G. Carlson might otherwise be entitled, but it is expressly understood and agreed between the parties that nothing contained in this agreement shall prevent or limit Blue Cross Blue Shield of Utah from claiming against State Farm via subrogation, whether through industry arbitration or through any court of competent jurisdiction, for

reimbursement of any and all medical bill payments made by that company on the Carlsons' behalf."

Q Okay. I want to show you a letter from Mr. Bennett to Mr. McGlinn, April 14th, 1981. Does this letter provide that the attachment, the release that you've just read from, was drafted by Mr. Fillmore, and agreed upon and sent to Mr. Bennett?

A Yes.

[111] MR. HUMPHERYS: Your Honor, first of all it's leading and it misrepresents. He says he drafted the final draft. I don't want to make speaking objections, but what we're having here is Mr. Belnap giving all the testimony.

THE COURT: Sustained. Just ask it non-leading.

Q (BY MR. BELNAP) Mr. Brown, what does this letter provide with respect to the portion that I've pointed out, and the release that was sent to Mr. Bennett?

A It says, "The reason the attachment had to be made and applied to the mutual release is due to the fact that Mr. Fillmore, as he drafted the final agreed-upon copy of the mutual release and settlement agreement, only included the State Farm Fire and Casualty Company, which was a policy on the car involved," and then continues.

Q All right. Mr. Brown, can you tell this jury whether or not there was a bona fide coverage question in this case, in your opinion?

A Yes, there was, I think, certainly a question as to whether or not this was an intentional act or not an intentional act. And the other questions had to do with the insanity, and whether or not a person could be, [112] have grounds for intent when they were sane, et cetera. There were a lot of issues on the case.

Q Now, there was some discussion on Friday that a claim committee had been held on this case. Do you recall that discussion?

A Yes.

Q And a decision had been made; is that right?

A On the claim committee?

Q Yes.

A Yes.

Q What was the decision of the claim committee?

A I believe the decision on the claim committee was to, kind of paraphrasing it without looking at it, but paraphrasing it, was to try for a declaratory action for the coverages of liability and for the MPC, the PIP parts of the coverage, and to pay the collision part of the coverage.

Q All right, and that -- What month was that claim committee held in?

A I'm trying to say January.

Q Okay. In April, did you have a discussion with Mr. Mendoza about this case?

A Yes, he had come into state from Illinois, and we discussed the case.

Q Can you tell us what the decision was [113] following this discussion?

A After that discussion, we decided to go ahead and try to negotiate a settlement for our policy limits. And Mr. Bennett was called on that, and asked to contact the other side and to try to work on such a settlement.

Q Now, do you know from the file, Mr. Brown, whether or not Blue Cross Blue Shield, the health insurance carrier, paid for Thad Carlson's medical expenses?

A I'm assuming that they did.

Q Did they send notice to State Farm that they were doing so?

A I believe that they did, but I can't recall the exact instance.

Q I want to go to another subject on this case, and then we'll move on. Do you recall on Friday a discussion about State Farm not providing property damage coverage?

A Yes.

Q I want to show you a memo and ask you if that's in Mr. Summers' handwriting?

A Yes, that's Ray Summers' handwriting.

Q Does that indicate anything about property damage coverage?

A Yes, it says B coverage, which is property [114] damage, liability is open, awaiting the clarification of extended coverage.

Q Now, Mr. Brown, I'll represent to you on Friday Mr. Humpherys represented that the Boxes' attorney came back and had to demand State Farm pay the property damage. Do you recall that question?

A Yes, I do.

Q Is that true?

A No, their company had already paid for the property damage, and they were subrogating against us on that.

Q Can you tell us if, in Mr. Summers' own handwriting, he reflects that this property damage was paid back to the other insurance company?

A Yes, that indicates that he paid the property damage liability to Unigard Insurance Group.

Q Do you recall a discussion about the Miller-Shoop case? The one that Mr. Summers allegedly said he was told not to mention anything about alcohol?

A Yes.

Q Okay. Did State Farm mention alcohol throughout the file?

A It was mentioned in several cases, yes.

Q In the course of that file and the handling of that file, was there a death of a young child in that [115] accident?

A Yes.

Q And when a child dies, typically who is it that brings a wrongful death case?

A It's typically the parents in a case like that.

Q Now, in this particular case, from your review of the file, can you tell us whether or not there was a problem that arose with respect to the parents?

A Yes, there was a divorce action going on, and so it was unclear as to who was going to be claiming for the death of the child.

Q And Mr. Brown, can you tell us if, in the course of that, there was any discussion about extending a payment for one of the other children that were in the accident, about a loss of services benefit?

A Yes, there was a question that, it had to do with a nine-year-old daughter, and the attorney was asking for payments for loss of services for the nine-year-old daughter.

Q And ultimately, were those paid?

A It was later, kind of changed. We'd asked for an affidavit from the mother as to what the child did, since they weren't employed someplace, and it was hard to tell. And the mother changed it into a demand [116] for wages. And that was eventually paid after we received the statement from the mother.

Q I want to move to another case, this is the Holdridge-Hadfield case, this is one where the eighty-plus-year-old woman was hit as a pedestrian. Do you recall this case?

A Yes, I do.

Q Can you tell us if it was Mr. Summers' allegation in this case that State Farm improperly attempted to cheat Medicare?

A I think that was the basis, yeah, one of his allegations.

Q I want to put up on the board a letter from the plaintiff's attorney dated December 18th, 1978, and I'll read that. "In consequence of my client's physical condition and her continued treatment for experienced disability, I herewith

make demand for and in her behalf for payment under the PIP provisions of her State Farm policy pending an adequate and possible surgery that is anticipated on the left arm.

"Please find herewith enclosed bills that have been accumulated to date, for which we request payment under the PIP provisions of the policy." Have I read that correctly?

A Yes.

[117] Q That's dated December 18th, 1978. I want to put up here a letter. Is this in response to that?

A Yes, that would be.

Q And who's the person writing this letter?

A Ray Summers.

Q And does the letter say anything about the fact that State Farm is not going to pay the bills that were received?

A No, the letter states that Ms. Hadfield does have the benefit of the PIP provisions of the Holdridge policy, and in fact, it shows payment is enclosed for those bills, and also payment for loss of services that are enclosed.

Q And did State Farm advance, and continue to advance money on this case?

A Yes.

Q And ultimately was there a settlement?

A Yes, there was.

Q You were asked this morning about the Logan City case. Do you recall that?

A Yes.

Q In that case, Mr. Brown, did State Farm deny any subrogation request from any worker's compensation carrier of Logan City?

A We did not, we never received requests for [118] payment.

Q Was there any indication in the file that Logan City had been put off, or stalled, or anything else?

A No. The memos in the file pretty much indicated that Ray Summers was waiting for them to make a claim for

several months, and they never did, so he advised closing the coverage.

Q You were asked about the Gittens case, Mr. Brown, as one of the release cases. Do you recall that this morning?

A Yes.

Q Are you aware whether or not Mr. Summers testified under oath on two separate occasions that there was nothing improperly done in that case?

A Yes, he did. He indicated that he was simply making out bills for what he had thought to be bills that she had incurred. When, in fact, she had not incurred those bills.

Q Now, Mr. Brown, after you learned from Mr. Bennett that Mr. Summers had made these bills out, was Mr. Summers given -- Let me rephrase that. What job action did you take against Mr. Summers?

A Well, we put Mr. Summers on a company-initiated leave of absence while we could [119] investigate the allegations.

Q And after investigating those, what further job action was given to Mr. Summers?

A After that we put him on a, what we called a permanent probation, or indefinite probation at that time, until we could determine that he was not going to repeat that, and do the rest of his claim job right.

Q Mr. Brown, can you tell this jury, when Mr. Summers was given the option of early retirement in the spring of 1982, or termination, did that have anything to do with the Campbell case that was tried some year and a half later?

A It had absolutely nothing to do with the Campbell case.

Q What did it have to do with?

A Mr. Summers' job performance simply got so bad that he was doing a disservice to our insureds and the claimants, and we felt that we really didn't want him in State Farm.

Q Mr. Brown, as you've gone through these files and counsel has asked you questions on both sides in the last two days of your appearance, did you see, one way or the other, documents in the files that, if State Farm was attempting to hide a position in a case, that those would have been in the file?

[120] A I didn't see any evidence there was any attempting of hiding any evidence in the files, no.

Q Did you see evidence in the files that you reviewed that was both favorable and unfavorable to State Farm?

A Certainly.

Q Now, Mr. Brown, is there any connection with that Carlson case and the Campbell case in any regard?

A Absolutely not. We had to look at each case based on the facts of that case.

MR. BELNAP: That's all, Your Honor.

MR. HUMPHERYS: Your Honor, I have two points, one -- This thing gets in my way, I'm sorry. One relates to the PIP regarding the truck accident and the Carlson case, he raised that, and I need to clarify that.

MR. BELNAP: Your Honor, that was gone into on cross examination.

MR. HUMPHERYS: But not the specific point. He raised the issue that PIP on the truck accident would be through the truck carrier.

THE COURT: All right, you can ask that.

MR. HUMPHERYS: And then I have one other item, but let me cover this.

MR. BELNAP: Your Honor, may we cover the [121] item?

THE COURT: He'll have to ask me about it.

RECROSS EXAMINATION BY MR. HUMPHERYS:

Q Mr. Brown, you said that the PIP coverage that will be available to Mr. Carlson would come from the truck, the insurance company of the truck who he ran out in front of?

A The pedestrian normally would be covered first from the vehicle involved in the accident.

Q And then State Farm would kick in, right?

A If the truck didn't cover, then State Farm would be the next one in line to see if coverage existed or not.

Q But there were other accidents, weren't there?

A There were three separate accidents.

Q The first one where he ran into posts and signs trying to kill himself. That would be State Farm's primary PIP responsibility, wouldn't it?

A Yes.

Q And when he pulled and went across the center line and hit head on with the Boxes, that also would be State Farm's primary PIP responsibility, wouldn't it?

A The file indicated that the majority of the [122] injuries, if not all of the injuries, were incurred when he drove underneath the truck, and that was the point I was trying to make on that.

Q Would you answer my question, please? Isn't it true that State Farm would be primary for all of the medical expenses and other PIP benefits resulting from the second accident when he crossed center line and hit head on into the Boxes?

A If there was any injury received by that and could be stated on there.

Q All right.

MR. HUMPHERYS: The other question, since Mr. Belnap asked about the files and whether he was able to determine whether there was good things and bad things in the file, and whether anyone altered it, I just want to ask him whether he has had control over the files, and whether he would have any idea what's been added or removed.

MR. BELNAP: Your Honor, I'm going to object that he's had his cross, it's beyond the scope of this court's prior rulings.

THE COURT: I'll allow that single question.

Q (BY MR. HUMPHERYS) All right. Mr. Brown, have you had custody of these files the last twenty years?

[123] A No, I haven't.

Q In fact, the first time you saw them was just a couple of weeks ago?

A For preparing for this case is the first time I ever viewed these files in detail.

Q All right. Isn't it true that you would have no idea what has been removed from those files, or put back into those files, from the time they originally existed?

A I can't imagine a circumstance where anything would ever be removed.

Q I'm asking you, would you know that, Mr. Brown?

A One way or the other?

Q Yes.

A I did not have custody of the files.

MR. HUMPHERYS: All right, I have nothing further.

MR. BELNAP: Your Honor, may I ask a followup on that?

THE COURT: Proceed.

REDIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Brown, as you reviewed the files, are you familiar with State Farm files? Have you seen a number [124] of files over the years?

A Yes.

Q Did it appear to you that -- Can you tell us whether any of the documents that you've seen in the files that we've made available to counsel appeared to be cooked up or concocted?

A No, from looking at the files, you can tell by the dates of the memos, and the content of the memos in the file, as to whether they're in the right order or not in there. And these look like they followed the proper sequence, and plus a lot of them are really old. They showed their age.

Q And back at that time, a lot of, Mr. Brown, have a lot of the letters we've been referring to are on carbon paper?

A Yes, they are. And much of it has Mr. Summers' signatures on them.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF CURTIS B. CAMPBELL, JUNE 14 & 18, 1996

[Vol. 8, R. 10263, commencing at p. 143]

MR. HUMPHERYS: Yes, plaintiffs call Curtis Campbell. Your Honor, Curtis Campbell has a very difficult time speaking, he gave his sworn testimony back in 1990 in the form of a deposition. We'd propose reading that, since it would be nearly impossible to have his testimony elicited in the typical fashion.

[144] * * *

MR. CHRISTENSEN: I'm beginning on page 3. And the record should reflect this deposition was taken a little over six years ago, March 16th, 1996. Or excuse me, March 16th, 1990.

* * *

[145] * * *

"Q So you know what that's about. For the record, would you state your name, please.

"A Curtis Bingham Campbell.

"Q And where do you live, Mr. Campbell?

"A At Lewiston, Utah, 20 East Center Street.

"Q How old are you, Mr. Campbell?

"A Seventy-two.

"Q What's the date of your birth?

"A February 23rd, 1918.

"Q Where were you born?

"A Ogden, Utah.

"Q Where did you go to school? Tell me about your educational background, will you?

"A Well, I started in grade school in Riverdale, Utah. I graduated from high school in Burley, Idaho. I graduated from Utah State University. I subsequently took a masters degree at Utah State.

"Q When did you get your masters?

"A In 1969.

[146] "Q What was that in?

"A Meteorology.

"Q And your bachelors, what was that in?

"A Mathematics.

"Q Tell me just generally what your work experience has been, will you? I don't want to know every job you've had or anything, but I just want to know generally what you've done for a living.

"A Well, while I was going to college I operated a radio servicing and sound equipment business, and electrical contracting. Subsequent to that, I taught high school in Davis High School, and subsequent to that I worked for the Boeing Company in engineering management for fifteen years.

"Q Is that in Seattle?

"A Well, whenever they sent me. Headquarters are in Seattle.

"Q Generally what years were you working for Boeing?

"A 1952, for the next, through '67.

"Q And what did you do after that?

"A Well, after that I had a cerebral hemorrhage, and following that I spent, or I went into electrical contracting, back in the field I previously experienced.

"Q Here in Utah, is that where you're doing [147] your contracting?

"A In Utah and Idaho.

"Q And how long were you involved in that?

"A Well, from about 1972 to '82.

"Q And since 1982, have you pretty much retired?

"A Well, I've done some since then, but in the last three years I haven't.

* * *

[150] * * *

"Q Now, when did you first get a lawyer other than Mr. Bennett to consult with about this case?

"A Either the day after the trial was closed, or two days after. I think it was the day after.

"Q Did you ever consult with anyone before the trial, other than Mr. Bennett?

"A I don't think so. I had inquired of him, [151] and his repeated response, he didn't feel I had any exposure.

"Q But I'm asking you now to tell me, if you did consult with some other lawyer before that case was tried, I want to know who it was.

"A No, I didn't.

"Q Did not? Okay. Who did you consult with after the trial?

"A Brent Hoggan and Miles Jensen.

"Q And what did you ask them to do for you?

"A I asked them to tell me what I should do, having known both of them quite a while before, I asked for their legal guidance.

"Q And did they give you some guidance as to what you should do?

"A Yes.

"Q What guidance did they give you?

"A Well, they wrote some letters to Wendell, and in general they said they would counsel with me on what to do as the case developed.

"Q Now, were you in touch with Mr. Hoggan and Mr. Jensen fairly frequently following the trial of the case, during the ensuing several months?

"A Yes.

* * *

[152] * * *

"Q Now, after the trial, and between, say, September 20 of '83 when the jury verdict came down, and the end of that year, were you aware of the fact there were any discussions going on between your lawyers, Hoggan and Jensen, and Mr. Humpherys and Mr. Barrett about you assigning any kind of a claim you might have for bad faith refusal to settle against State Farm to Ospital and to Slusher? Were you aware of that, any discussions like that?

"A Yes.

"Q And if you did assign any claim for bad faith that you had, what did you expect to get in return?

"A I expected to get relieved from those judgments posted against me.

"Q You expected that if you were to assign your claim for bad faith against State Farm to Slusher and Ospital, that they, in turn, would agree not to try to [153] enforce collection of the judgment against you from your personal assets?

"A Right, that's correct.

"Q In effect, they were giving to you a covenant not to execute against your personal assets?

"A I hoped to -- I hoped that that's what would come from it.

"Q And you knew those discussions were kind of ongoing between the time you first talked to Mr. Hoggan after the trial, and Mr. Jensen during the next several months?

"A Yes.

"Q Did your lawyers inform you -- when I say "your lawyers," I'm talking about Hoggan and Jensen -- that they had reached any kind of a tentative agreement with Mr. Humpherys and Mr. Barrett about that?

"A We met in their office with Mr. Humpherys and Mr. Barrett. I can't recall the dates right now, but it was about the end of 1983.

"Q Okay.

"A And we discussed the pros and cons of being able to develop such an agreement.

"Q And when you left that meeting, did you feel that such an agreement had been reached?

"A No.

[154] "Q And it was just subject to --

"A I felt -- The attempt to develop such an agreement had been reached.

"Q And was there anything said about the fact that until an agreement was reached, that no effort would be made to execute on your personal property, your personal assets?

"A That's the feeling I had, but I can't give you any details on it.

"Q But you had the feeling that they were going to leave you personally alone, you and your wife, until they had an opportunity to see if they could get this agreement finalized?

"A Right, that's how I felt.

"Q And Mrs. Campbell at that -- And was Mrs. Campbell at that meeting, or just you?

"A Just me.

"Q Who else was in attendance at that meeting?

"A Two of my brothers were there, Brent Hoggan, Miles Jensen, Mr. Humpherys and Mr. Barrett.

"Q Where did that meeting take place?

"A In Mr. Hoggan's office, conference room.

"Q During the period between September 20, 1983 and the end of the year, did you ever talk with Mr. Bennett about the fact that your lawyers, Hoggan and [155] Jensen, your personal lawyers, were making an effort to make an agreement with Mr. Humpherys' client and Mr. Barrett's client to the effect that if you assigned your bad faith claim against State Farm, that they, in turn, would agree that they would not try to collect the judgment out of your personal assets?

"A I don't remember.

"Q You don't remember whether you talked to Mr. Bennett about that, or not? Let me just give you -- This is a long time ago, Mr. Campbell, and in fairness to you, you need some things, maybe, to refresh your recollection."

MR. CHRISTENSEN: Exhibit 4 was marked.

"Q I'm going to show you what appears to be a letter dated November 23, 1983 from Wendell Bennett to Brent Hoggan. And it appears to, it shows that a copy of this went to you. Without your reading the entire letter, could you read this particular paragraph right here? You're at liberty to look at the whole letter if you want."

MR. HUMPHERYS: And then I review the document.

"Q Now, the only question I have for you is, does that help refresh your memory that you did talk to Mr. Bennett, and that he was concerned about assisting [156] in any way he could to get this kind of an agreement not to try and collect out of your assets from --

"A This was not a conversation between me and Mr. Bennett, but this was between Brent Hoggan and Mr. Bennett.

"Q Okay. But do you ever recall, did you have any dealings at all with Wendell Bennett after the trial of the case?

"A No. I think that what he's reflected here was the attitude he'd shown all of the time, that it would be a conflict between my interest and his interest in that, and I was aware of this. He copied me on that, as you see here he sent a copy of this to me.

"Q Right, but my question is, did you have any personal dealings with Mr. Bennett between the time of the trial, the jury verdict, and, say, the end of the year?

"A No. Everything after that was done through Mr. Brent Hoggan.

"Q So you just never did even talk to Wendell on the phone, or you didn't meet with him, or --

"A I felt that he felt as indicated there, that it would be a conflict of interest in what he was doing. He tried to keep me informed of his efforts to file motions in the court, to have the change in the verdict. [157] He kept me informed of that, but personal contact, no.

"Q Oh, okay. So any dealings, basically, between you and Wendell Bennett went through your lawyers, Brent --

"A Right.

"Q -- Hoggan and Miles Jensen?

"A But whenever he had anything that he thought was important for me to know, he sent it and asked Wendell to, or Brent to contact me or send me copies."

MR. CHRISTENSEN: All right, Exhibit 5 was marked.

"Q Just for the purpose of establishing a date, I'm going to show you what we have marked as Exhibit 5, which appears to be a letter from Brent Hoggan to Wendell Bennett dated December 23rd, 1983. I show you that letter for the purpose of helping refresh your memory, and ask you if that meeting you've already told me about --

"A This is the meeting I told you about.

"Q Okay. And did that happen on or about January 6th?

"A It happened on January 6th.

"Q 1984?

"A Right.

"Q And that's the meeting where Mr. Humpherys, [158] Mr. Barrett, two of your brothers, and Mr. Hoggan and yourself --

"A Right.

"Q -- attended?

"A I can't be real sure that my two brothers were there at that meeting. But we met with, my two brothers met with me and with Hoggan and Jensen, I think two or three days

preliminary to this. And so I think probably my brothers weren't there for this meeting. I don't remember for sure.

"Q Now, when you came away from this January 6th, 1984 meeting, in your mind did you believe that progress was being made in reaching an agreement to the effect that if you would assign your claim against State Farm for alleged bad faith, that in turn the Ospitals and Slusher would then not try to collect that judgment out of your personal assets?

"A My feeling was, we were making progress to that direction.

"Q And did you report that to Mrs. Campbell?

"A Yes.

"Q Following the January 6th, 1984 meeting, were you in contact with Mr. Hoggan and Mr. Jensen? Did you talk to them at various times?

"A Yes.

[159] "Q Did they keep you posted on what was going on as far as this judgment was concerned?

"A I felt that they did.

"Q And did they let you know that they were in the process of trying to reduce your agreement to writing?

"A Yes.

"Q And when I say "your agreement," I'm talking about the agreement discussed at the January 6th meeting.

"A Right.

"Q Well, did you understand that further discussions were going on relative to the subject matter that was discussed at the January 6th meeting?

"A I understood that they were.

"Q And did you understand that there was an effort being made during this period of time to reduce an agreement to writing?

"A I assumed that eventually it would come to that. Now, that's an assumption. I can't give you any other verification on that."

MR. CHRISTENSEN: All right, Exhibit 6 was marked.

"Q I'm going to show you what we've marked as Exhibit 6. And this appears to be a letter from Scott [160] Barrett, your lawyer, or from Scott Barrett to your lawyer, Miles Jensen, and with a copy of it to Mr. Humpherys. Would you just take a minute to read that letter.

"A I'm aware of this letter.

"Q You're aware of that?

"A Yes.

"Q And you're aware of the fact that Mr. Barrett is saying here that they're not going to try to do anything by way of collecting on the judgment out of your personal property?

"A At that particular time.

"Q Now, ultimately there was a written agreement reached; is that right?

"A Yes.

"Q Let me show you what has been marked as Exhibit 7. It appears to be a letter from Mr. Humpherys to Scott Barrett dated December 10, 1984, and attached to it appears to be the agreement that we've been talking about dated December 6th, 1984 between yourself and Slusher and Ospital. Would you look at those and just tell me if you did get a copy, or were aware of that letter of the agreement.

"A I signed it.

"Q And are you aware of that letter?

[161] "A Yes.

"Q Mr. Campbell, I guess you were aware of the fact that State Farm and your lawyer Wendell Bennett did appeal the judgments to the Supreme Court of Utah?

"A Yes.

"Q You're also aware of the fact that Mr. Bennett filed post trial motions in an effort to get the jury verdict set aside?

"A Yes.

"Q And you're aware of the fact, too, that he was unsuccessful in doing that?

"A Right.

"Q And what did Mr. Bennett tell you as far as his opinion on his chances of success in reversing that judgment?

"A I don't think he ever told me anything about that. I didn't -- The only thing that I ever received on that was some letters he wrote to Brent Hoggan, is the only thing I have. I don't have any recollection at all of him stating an opinion of the possibility of success.

"Q Actually, you didn't talk to him directly, did you, after the trial?

"A No, I didn't.

"Q All your dealings were through Hoggan or [162] Jensen?

"A Right.

"Q You're aware of the fact that ultimately, in 1989 the Supreme Court affirmed the judgments?

"A Right, yes.

"Q Were you shown a copy of the Supreme Court decision?

"A Yes.

"Q Following the affirming of that judgment, you're aware of the fact that State Farm paid both judgments in full, together with all the interest and costs? Are you aware of that?

"A I was told that yesterday.

"Q You didn't know that until yesterday?

"A No, I didn't.

"Q Your lawyers, Brent Hoggan and Mr. Jensen never did tell you that?

"A Nobody told me that.

"Q And how did you learn about the fact that the judgments had been paid yesterday?

"A Mr. Humpherys told me yesterday.

"Q When did you first employ Mr. Humpherys to act as your lawyer?"

MR. HANNI: Could we, just for a moment, so the jury gets this in context, I'd like to just call the [163] court and jury's attention to the fact that this deposition, as Mr. Christensen said, was taken in March, or January -- Which is it, March or January? March of 1990. And for what he's talking about is the day before the deposition was taken, is when he was first told the judgment was paid.

MR. CHRISTENSEN: All right. Where did I leave off?

MR. HUMPHERYS: Read question, line 10.

"Q When did you first employ Mr. Humpherys to act as your lawyer?"

MR. HUMPHERYS: Then Mr. Humpherys said, "In what regard, counsel? There's numerous aspects of these elements. As it relates to the bad faith claim?

"Q Yes, as it relates to the bad faith. Well, let's find out. Does Mr. Humpherys represent you in any matter other than this bad faith claim against State Farm?

"A No.

"Q Okay. Now, we have the date of your agreement with Slusher and Ospital, which is December 6th, and that's the written agreement of 1984. So what I'm trying to do is help refresh your memory, and you tell me when you employed Mr. Humpherys as your lawyer.

"A Okay, the agreement was an approach we would [164] take as the time came, but this could not be implemented until after the appeal was processed.

"Q I see.

"A And so it would be sometime after that before we made, before there was any contact made. And any contact that was made with him up until the last, I think during the last month is the first time that we've communicated directly.

"Q I see.

"A Before that it was all through Jensen and Hoggan."

MR. CHRISTENSEN: Moving to page 22.

MR. HANNI: Do you have any problem reading the rest of that?

MR. HUMPHERYS: Yes, there was a problem with that, subject to an objection.

MR. HANNI: Hold on just a minute and I'll make a note of that.

MR. CHRISTENSEN: Moving to page 22, line 17, Exhibit 8 was marked.

"Q Mr. Campbell, you've already told me that the first time you became aware of the fact that State Farm had paid these judgments in full, including interest and costs, was yesterday, March 15th, 1990.

"A That's right.

[165] "Q I'm going to show you what has been marked as Exhibit 8, which is a letter from myself to Mr. Humpherys. Would you please read that? Give us the date of that letter for the record, will you?

"A That was February 25, 1986.

"Q Have you read that letter?

"A I saw this the other day.

"Q You saw that the other day?

"A I was aware of this letter for, I don't remember when I received the letter, but I became aware of it about a month ago or something like that.

"Q And how did you become aware of it?

"A I can't remember for sure, but I have a copy of it in my files now.

"Q And your best memory is you got that about a month ago?

"A I don't know when I got it. I don't remember seeing it before that time.

"Q But were you ever told, prior to yesterday, that State Farm had offered to pay these judgments, together with all interest and costs, in full?

"A As I indicated, I saw this, and I never knew that any further action had been taken on it.

"Q Now, that's Exhibit 7 we're talking about?

"A Eight.

[166] "Q Oh, 8, I'm sorry. Exhibit 8.

"A Uh-huh.

"Q And is it your best memory that you got a copy of that letter approximately a month ago?

"A I'm not sure when I got it.

"Q Give me your best recollection about it.

"A Okay. I never remember seeing it until about a month ago.

"Q And what were the circumstances under which you saw it for the first time?

"A Well, I was going through all my papers I had, and the copies that were made for me from various sources, and when I went through them, putting them in a folder, that's when I became aware of this.

"Q Of that letter?

"A Right.

"Q Do you have any recollection of being told by anyone prior to the time you saw that letter, Exhibit 8, approximately a month ago, do you remember ever being told by anyone that State Farm had offered to pay these judgments in full, together with interest and costs?

"A No."

MR. CHRISTENSEN: And then Mr. Humpherys said, "For the record, now that he's answered, I'd like to make sure that we clarify that the offer was also [167] contingent upon the condition that all claims be dismissed, as well, including the bad faith claims, and it was not just an offer to settle the judgment.

"Q Well, just so the record is clear, what Mr. Humpherys said is so. This offer was made to pay the judgments with interest and costs, in return for dismissal of any claim you might have against State Farm.

"A Yes.

"Q All right, you understood that, you do now?

"A I do now, yes.

* * *

[169] * * *

"Q Now, going back to the date of the trial, date of the verdict was September 20, 1983, and you've told me about the fact that you were aware there were discussions going on between then and the time that you had your meeting on January 6th, 1984. These [170] discussions were between your lawyers, Hoggan and Jensen, and Mr. Humpherys and Mr. Barrett about your assigning your bad faith claim against State Farm in return for them agreeing that they would not try to collect the judgment out of your personal assets. You've told me about that, right?

"A Yes.

"Q And you've told me that it was your understanding that while these discussions were going on, that no effort would be made to try to collect on your personal assets.

"A That they probably wouldn't.

"Q Okay. And then you got a copy of that letter in March of 1984 that we have marked here as an exhibit. Do you recall what I'm talking about?

"A That's the one from --

"Q I think that's from Barrett to --

"A To Jensen.

"Q Yes.

"A That would be this one?

"A That would be this one.

"Q May I see that before -- Now, in March, I think you told me, of '84 you were sent a copy of this letter, Exhibit 6.

"A Am I listed on there as a --

[171] "Q No, you're not listed, but didn't you tell me you did receive a copy of that letter, or that you're aware of that letter? You have seen it?

"A I was aware of it, yes, and I was aware of it.

"Q And were you made aware of it in this time frame, early 1984?

"A Yes.

"Q Now, that letter from Mr. Barrett to your lawyer, Mr. Jensen, talks about the fact that your lawyers are trying to work out this agreement with Mr. Humpherys and with, and that is, this letter refers to the fact that these negotiations are going on.

"A Right.

"Q And to try to reach an agreement where you would assign your claim against State Farm in return for an agreement that they wouldn't try to collect the judgments out of your personal assets."

MR. HUMPHERYS: And I nod my head.

"Q And this letter says, 'In the meantime, you may be assured that no effort to levy execution on Mr. Campbell's property will be made until after it becomes apparent, if it does, that no agreement is possible as to a covenant not to sue or an assignment concerning the bad faith claims against State Farm [172] insurance.'

"Now, was that your understanding as to the agreement that had been reached between your lawyers and Mr. Humpherys and Mr. Barrett, that until such time as these negotiations completely broke down, you just couldn't reach an agreement, that you were not going to make, that they were not going to make any effort to collect out of your assets, out of your personal assets?

"A As long as we were working in good faith to come to that agreement, I understood that they would not exercise judgment against me.

"Q And did that remain your understanding all during this time, down to December 6th, 1984, when --

"A The agreement.

"Q -- the agreement was finally signed?

"A I think so, yes.

"Q And then, of course, after the agreement was signed on December 6th of 1984, you knew the agreement was finalized, and that Slusher and Ospital would never be able to go against your personal assets to try and collect their judgments?

"A No.

"Q You knew they had agreed not to?

"A They agreed not to pending what would be accomplished on the bad faith claim.

[173] "Q Well, didn't you understand that the effort -- I'm just talking about the judgment that they had against you. You understood that after you signed that agreement on December 6th, 1984, that Slusher and Ospital would never be able, and never would make any effort to try to collect those judgments out of your personal assets. You understood that, didn't you?

"A No.

* * *

[174] * * *

"Q What did you understand?

"A I understood that they would not, until the results of the bad faith claim was filed, and the results were turned in, I understood that if they did not make recovery sufficient on the bad faith claim that I'd still be liable for whatever else there was.

"Q Where's our exhibit?

"A Number 7?

"Q Can you take this agreement and point out to me, Mr. Campbell, where it says that, if it does?

"A In paragraph 1, here, it says, quote, 'The judgment, however, shall remain owing and unsatisfied only to the ex --'"

MR. HANNI: "And satisfied." You said "unsatisfied."

MR. HUMPHERYS: Sorry, let me state again, thank you, counsel.

"A In paragraph 1, here, it says, quote, 'The judgment, however, shall remain owing and satisfied only to the extent that payment is made thereon.'

[175] "Q Let me see that. Paragraph 1, you say?

"A Yeah.

"Q Well, in any event, your understanding was as expressed in this agreement, Exhibit 7?

"A Right.

"Q And whatever the effect of that is, that is what you understood?

"A Yes.

"Q But in essence, is it a fair statement, Mr. Campbell, that during the course of these negotiations that ultimately led to the signing of this agreement, Exhibit 7, and since then, was it your understanding that nobody was going to try and come out and sell your property out from under you to settle these judgments? Isn't that your understanding?

"A Until the process of law that is indicated there was processed.

"Q Had anybody, since the date of the trial in September of 1983, has anybody ever made any effort to sell your assets out from under you?

"A No, they haven't.

"Q Now, you are aware of the fact these judgments were in the amount of over $200,000 with interest; is that right?

"A Yes.

[176] "Q And did you have any assets sufficient to, if somebody had tried to come and sell them, to satisfy those judgments?

"A No.

"Q So can you tell me just what assets, just in general, you did have at the time of the trial of this case in September of '83?

"A Well, I built a home and I sold that, I had the, I held the mortgage on it. That's one asset I had. My wife owned a home when she and I married, which was ten years ago last June, and that was an asset, that was hers before we got married, before we were married. And I don't know whether that would have been possible to count that or not, but I felt that she was reasonably protected on that.

"Q You felt that was hers before you married her, and the title was still in her name?

"A Yeah.

"Q And of course you knew these judgments were against just you?

"A Yes.

"Q You knew they were not against Mrs. Campbell, right?

"A I felt that she -- I felt that what she had was secure.

[177] "Q So am I understanding you correctly, the only asset that you had from which these judgments might have been partially satisfied was the equity you had in this home you'd sold?

"A Well, I owned the home. That was paid for.

"Q And you'd sold it, and you had a mortgage on it; is that right?

"A Yeah, I held the mortgage on it.

"Q And how much was owing on that mortgage in September of '83?

"A There was about $52,000.

"Q Did you have any other assets, other than that mortgage, out of which, if they had tried to satisfy the judgments, they could have?

"A I had the tools and materials I had from electrical contracting, which wouldn't be valued at a great lot. It would have made a few thousand dollars in there."

MR. HANNI: Wait a minute, "it would have made a few dollars," he says.

MR. HUMPHERYS: Thank you.

"A It would have made a few dollars.

"Q How much, about?

"A Oh, maybe something less than $5,000.

"Q So other than this mortgage and your [178] electrical tools, did you have any other assets that they might have looked at to satisfy this judgment, these judgments?

"A Well, unless they go to life insurance provisions.

"Q Did you have any cash surrender values in your life policies?

"A I think that the total amount that I had there was less than $10,000.

"Q So other than the cash surrender value in your policy, or electrical tools, and your mortgage on your home you sold, do you have any other assets that they could have attempted to satisfy?

"A Not that I can think of now."

* * *

[179] * * *

"Q And it's your memory now -- When did you and Mrs. Campbell marry?

"A June 27, 1979.

"Q And is it your recollection that Mrs. Campbell conveyed a half interest in her home to you before the accident?

[180] "A I don't know, I think it was after.

"Q You think it was after?

"A It was before the trial.

"Q Before the trial.

"A Right.

"Q She conveyed the interest?

"A And I can't remember when it was.

"Q Okay.

"A I can too remember when it was."

MR. HUMPHERYS: And then Mrs. Campbell said, "Yes, I can too. Now when I stop to think about it, it was January of 1980."

And then I asked Mr. Hanni, "Do you mind if she responds?"

MR. CHRISTENSEN: "No, I don't care, I just want the facts."

MR. HUMPHERYS: And Mrs. Campbell said, "Isn't that when you had to dig up that money?"

And Mr. Campbell said, "No."

And Mrs. Campbell said, "Oh, okay."

"Q What's your memory on it, Mr. Campbell?

"A It would be close to December of 1981.

"Q December of '81?

"A It could have been January, or it could have been February of '81, but it would be in that [181] neighborhood.

"Q Now, was Mrs. Campbell's home free and clear of any encumbrances?

"A At that time, yes.

"Q I gather now it's got an encumbrance on it?

"A No.

"Q That's when he took it off?"

MR. HUMPHERYS: Mrs. Campbell said, "That's when he took it off."

MR. CHRISTENSEN: Okay.

"Q Okay, Mr. Campbell, tell me this. Now that State Farm has paid these judgments with interest and costs in full against you, paid the judgments that were against you and had paid them in full, in what way do you feel that you've been damaged?

"A I don't think anybody could dig up enough money to put me through the emotional stress and strain that this has brought on me. I wouldn't sell for any amount of money what this stress has caused me. Nobody could hire me to do it.

"Q In what way was it stressful?

"A Well, there's quite a lot of things. Number one, I had some associates who I had worked with before. When that advertisement, when the news printed that, publicized the judgment against me for something, that [182] broke communications between me and them, and so I think they didn't know how to talk to me, and I don't know how to talk to them.

"Q Who is this you're talking about now?

"A Some business associates.

* * *

[185] * * *

"Q And you've had no, you had no projects that were in place at the time of the trial, then, that you were working on?

"A No. We were in Minnesota for eighteen months before the trial, so that there was no projects in place at that time locally.

"Q And you and your wife had actually gone on a mission for the church, had you not?

"A Yes.

"Q You didn't get back here until September 1 of 1983?

"A It was the last of August.

"Q Of '83?

[186] "A Yeah.

"Q And then, of course, the trial in this case started on September 12 of '83.

"A Right.

* * *

"Q All right, tell me in what other way you feel that you've been damaged, in view of the fact State Farm paid these judgments in full.

"A Well, the emotional stress of knowing that these things were hanging over our head has been a very big burden to carry.

"Q But you didn't ever believe, did you, Mr. Campbell, that any of your personal assets were ever going to be at risk? You didn't believe that, did you?

"A Yes, I did.

"Q You did?

"A I believed they were at risk, and it wasn't until yesterday I found out they weren't.

"Q I see. And you're telling us that your [187] lawyers -- Did you ever ask your lawyers -- and when I say your lawyers, I'm talking about Hoggan and Jensen -- did you ever ask them, once this agreement was entered into, Exhibit 7, did you ever ask them whether your assets could ever be at risk, your personal assets?

"A As stated in the agreement, they are subject to the risk until we were paid."

* * *

"Q Going back, now, Mr. Campbell, you've told me several times that between the time of trial, when the jury verdict came out, and the time that this December 6th, 1984 agreement, which is Exhibit 7, was signed, that you were

aware of discussions going on between your lawyers, Hoggan and Jensen, with [188] Mr. Humpherys and Mr. Barrett, where there was an effort being made to reach agreement that if you would assign any bad faith claim you had against State Farm, that they, in turn, would agree not to ever try to satisfy these judgments out of your personal assets. Do you remember that testimony?

"A I don't think I ever said never. But, or that they wouldn't ever. But --

"Q No, I'm talking about between that period of time, they weren't going to attempt to collect out of your assets. I'm just limiting it.

"A During that period of time?

"Q Yes."

MR. HUMPHERYS: And then I made the comment, "You mean from the trial, or from the date of the letter that you've referred to?

"Q From the date of the jury verdict, on up until that agreement finally got settled and signed. It's been your testimony that negotiations during that period of time, the discussions were going on in an effort to reach an agreement.

"A Right.

"Q And it was your understanding, you've told me that during that period of time it was your understanding that no effort would be made to try and [189] collect those judgments out of your personal assets."

MR. CHRISTENSEN: Mr. Humpherys said, "I object to the representation of his testimony. His testimony was that from the January 6th meeting, and at the point in time when he was told that there would be no efforts, but he did not say that immediately after trial he did not think that." And then Mr. Campbell answers.

"A Between trial and that January 6th meeting I wasn't sure at any time that I wouldn't have a judgment, or an attempt to take my possessions.

"Q But you have said that you knew discussions were going on with your lawyers and with Mr. Humpherys and Mr. Barrett, and that you certainly had every hope and expectation that they wouldn't be trying to collect anything from your personal assets.

"A I certainly had hope.

"Q And after the January 6 meeting it was your understanding that no effort would be made to try and satisfy those judgments out of your personal assets until such time as an agreement absolutely couldn't be reached. Isn't that your understanding?

"A I think that's right.

"Q Okay, all right. Now, you're telling me -- Or let me see if you're telling me. Once you reached [190] agreement and signed Exhibit 7, did your understanding change at all, or wasn't that just a finalization in your mind of what your understanding had been prior to the time of the agreement, namely that if you signed your claim against State Farm for bad faith, that these people would never make any effort to try and collect those judgments out of your personal assets?"

MR. BELNAP: Counsel, as Mr. Humpherys indicated, would it be appropriate, so the jury knows what Exhibit 7 is, that we show them the document?

MR. CHRISTENSEN: That would be fine.

MR. HUMPHERYS: That would be fine.

MR. BELNAP: I'm missing the second page. December 6th, 1984 agreement, let me see if I can find the second page.

MR. HUMPHERYS: I don't think the jury's had a chance to read the whole thing, Your Honor. Maybe this would be a good time to publish to the jury the entire agreement, because so far I guess we've talked about it for a week and a half, maybe now's the time to have them read it.

THE COURT: Any objection?

MR. BELNAP: No.

MR. HUMPHERYS: Why don't we read it into the record. "Agreement made this 6th day of December, 1984 [191] by and among Robert Slusher, John and Winnifred Ospital, and Curtis Campbell.

"Whereas, as a result of an automobile accident which occurred on or about May 22nd, 1981, Slusher and Ospitals have heretofore brought actions against Campbell seeking damages for personal injuries and wrongful death in the First District Court for Cache County, State of Utah, entitled Slusher versus Campbell et al., Civil Number 19910, referred to hereafter as Cache County case,

"Whereas trial in said Cache County case was held in September, 1983, resulting in a jury finding that Campbell was 100 percent at fault for said accident, and a jury verdict and judgment against Campbell in an amount of $133,098.25 in favor of Slusher, and $51,845.68 in favor of Ospitals,

"Whereas Campbell was insured with State Farm insurance company at the time of said accident, and shortly after said accident Campbell gave State Farm notice of said accident, and fully cooperated with the representatives of State Farm in the investigation of said accident,

"Whereas State Farm retained attorney Wendell E. Bennett to defend Campbell in said Cache County case,

"Whereas State Farm and its representatives, [192] including Attorney Bennett, at no time prior to the jury verdict ever advised Campbell that there was a significant risk of a judgment against him, that a possible judgment may well exceed his policy limits of $25,000 per claim, and that there were adverse witnesses and evidence against Campbell's position, and State Farm, through its representatives, expressly advised Campbell on numerous occasions that he had little or no chance of losing the case, and that even if some of the fault of the accident was attributable to him, any liability would be less than his policy limits,

"Whereas it appears that State Farm unfairly and in bad faith misrepresented and/or failed to disclose the risks of Campbell's personal exposure, and with indifference, failed to advise him of the existence of adverse testimony,

"Whereas State Farm had ample opportunity before and during the trial to settle the claims of Slusher and Ospitals for the amount or less than the amount of Campbell's policy limits, but failed to do so and did not even make an attempt to negotiate a settlement of these claims,

"Whereas by reason of the bad faith of State Farm Campbell has a claim against State Farm to recover damages resulting from the bad faith,

[193] "Whereas Campbell has not," I believe that's a typo and it should be no, "has no other insurance to pay the judgments of Slusher and Ospitals, he is retired and unemployed and he would have to jeopardize his financial security to personally pay the claims of Slusher and Ospitals,

"Whereas Slusher and Ospitals are willing to covenant not to execute against Campbell's personal assets in turn for Campbell's agreement herein to share with them the recovery against State Farm,

"Now therefore, for the covenants herein and the other good and valuable consideration, the parties agree as follows:

"Number 1. Except as stated herein, Slusher and Ospital shall not execute on any of the personal assets and property of Campbell, except as it relates to the insurance policy with State Farm, or any other insurance policy that may offer insurance coverage for said accident.

"The judgment, however, shall remain owing and satisfied only to the extent that payment is made thereon. Nevertheless, in the event any credit check is made by a credit agency, Slusher and Ospital shall disclose that Campbell has no personal liability on the same, and that none of his assets are subject to [194] execution in order to pay the same.

"Slusher and Ospitals agree to execute a partial release of said judgment upon request of Campbell as to any real property Campbell may be buying or selling.

"Number 2. Campbell shall fully pursue and prosecute all claims he may have against State Farm, and shall fully cooperate and assist his attorneys in pursuing said claims. Upon the recovery of any monies, whether by settlement or judgment, Campbell shall disburse the proceeds of any such recovery as follows:

"A, for the costs and expenses of the litigation, including attorneys fees, B, to the payment of the judgments in favor of Slusher and Ospitals, including interest and costs, C, the balance shall be disbursed to the parties upon the following proportion: Slusher, 45 percent, Ospital 45 percent, Campbell, 10 percent.

"Number 3. Slusher and Ospital shall be kept fully advised of the progress and status of the claims against State Farm, and shall have the right to be a part of all major decisions relating to said litigation, including any negotiations for settlement. There shall be no settlement of any claim against State Farm without the approval of Slusher and Ospital.

[195] "Campbell hereby retains the law firm of Christensen, Jensen and Powell of Salt Lake City, Utah, and Barrett and Brady of Logan, Utah, as his attorneys to try all litigation and claims against State Farm. Attorneys fees will be based upon a contingency fee of one-third of any recovery plus expenses and costs. In the event there is no recovery, or insufficient recovery to cover the expenses and costs, the parties shall be responsible to pay said costs on the same proportionate basis as outlined in paragraph 2-C above.

"No substantial costs will be incurred in excess of $500 without the approval of Campbell. In the event there is an

appeal associated with the litigation against State Farm, the attorneys fees will be based upon a contingency fee of 40 percent of any recovery plus expenses and costs.

"It has been disclosed, and the parties are aware that said law firms have represented Slusher and Ospitals in the Cache County case, and will continue to represent Slusher and Ospitals hereafter. The parties are further aware that to pursue the anticipated claims against State Farm, it will be necessary to present evidence of the communications with State Farm concerning the settlement of the Cache County case prior to trial.

[196] "Inasmuch as L. Rich Humpherys and Scott Barrett had some participation in such communications, the possibility exists that they may be required to testify at trial. It is believed, however, that such possibility is remote, as it is anticipated that such facts will either be undisputed or readily established by document evidence, and other witnesses.

"Because of this, and because of said attorneys' knowledge of the relevant facts and circumstances, and their expertise, the parties desire to have said attorneys represent them in the claims against State Farm.

"Number 6. Each party has had the advice of separate counsel as it relates to the terms of this agreement, freely and voluntarily, and each party shall continue to have the right to separate personal counsel, to advise them concerning their personal rights and obligations hereunder."

And then it is signed by Curtis Campbell, Miles P. Jensen, attorney for Curtis Campbell, Robert G. Slusher, Junior, W. Scott Barrett, John Ospital, Winnifred Ospital, and L. Rich Humpherys.

* * *

[197] * * *

"Q Okay, all right. Now, you're telling me, or let me see if you're telling me, once you reached agreement and signed Exhibit 7, did your understanding change at all, or wasn't that just a finalization in your mind of what your understanding had been prior to the time of the agreement, namely, that if you assigned your bad faith claim against State Farm for bad faith, that these people would never take any, never make any effort to try and collect those judgments out of your personal assets?

"A They wouldn't until action was taken on the appeal, or whatever action did not meet the, didn't fulfill the judgments.

"Q Now, let me be sure I understand you, Mr. Campbell, and know what your understanding was, because I want to know what your lawyers told you about all this. So let's recap it a little bit. Between the time of the jury verdict and the January 6, '84 meeting you knew discussions were going on with your lawyers, Hoggan, Jensen, Mr. Humpherys, and Barrett.

[198] "A Yes, right.

"Q Trying to reach agreement where you would assign your claim against State Farm in return for their promise that they would never try to collect these judgments out of your personal assets, and you, during that period, had every expectation and hope that they would never try to collect out of your assets?

"A The word 'never' was not part of it.

"Q No, no, you've got to listen to my question.

"A Okay.

"Q I'm saying that between the time of the trial and your January 6th, '84 meeting, you knew discussions were going on with your lawyers, Mr. Humpherys and Mr. Barrett, trying

to reach an agreement where you would assign your interest, or your claim against State Farm, in return for their promise that they would not try to collect these judgments out of your personal assets. You knew these kinds of discussions were going on?

"A Yes.

"Q And during that period you believed, or hoped that during those discussions no effort would be made to try and collect out of your personal assets?

"A That's right, that was my hope.

"Q All right. Now, once the January 6th [199] meeting was held, then it was your understanding that no effort would be made by Ospital or Slusher to collect those judgments out of your personal assets until such time as negotiations totally broke down?

"A That was my understanding.

"Q So from January 6, '84 until December 6, '84, when the agreement was signed, it was your understanding that your personal assets were not at risk during that period of time; is that right?

"A Only partly, because when you're trying to reach an agreement, until you get that agreement reached, you haven't finalized at that point.

"Q Well, I understand that, but I'm just trying to get at your understanding. You've already told me many times here on this record, and the record will speak for itself, that from January 6th until December, when you finally signed the agreement, it was your understanding that Ospital and Slusher would make no effort to try and collect those judgments out of your assets?

"A As long as the efforts to reach the agreement were making progress.

"Q Okay. Now, finally, then, the agreement is entered into on December 6th of '84. Did you then believe that something changed with respect to your [200] personal assets being at risk?

"A No, I believed that they were not at risk in the immediate present, but out a ways, depends on what happened in the appeal case and so on, before I'd know.

"Q Under what circumstances -- Tell me your understanding, under what circumstances did you believe, or did you understand that your assets could become at risk after you signed Exhibit 7?

"A Well, if the appeal went through and the state Supreme Court reversed the process, then we're right back starting the game all over again. That was one possibility.

"Q And if that happened, did you understand that if that did happen, did you understand that you started all over?

"A Yeah, it would start all over again.

"Q And that your assets couldn't be at risk at that point? Wasn't that your understanding?

"A I think that's right.

"Q Now, you tell me after you signed this agreement, Exhibit 7 -- "

MR. HUMPHERYS: And then Mr. Humpherys says, "Hold it, I think there was a misunderstanding. He said if there was a reversal of the appeal and you were back to where you started, that your personal assets would [201] not be at risk."

And then Mr. Campbell said, "No, I did not get that message from it."

And Mr. Humpherys said, "I thought there was a misunderstanding."

And then Mr. Campbell said, "They would be at risk, just like they were before we went into the first trial.

"Q All right. In other words --

"A Just be back starting all over again.

"Q You'd be starting all over again?

"A Uh-huh.

"Q But you would then have the opportunity of settling that case within your policy limits, provided an offer was made, right?

"A Right.

"Q All right. Tell me under what other circumstances, under your understanding of this, that was made on Exhibit 7, would your personal assets ever become at risk?

"A Well, I had no way of knowing that any agreement would be reached that would cover the total judgments, and as long as they were not met, then I'm still at risk until they were met.

"Q So you understood, here, that during the [202] time of negotiating, your assets were not at risk, your personal assets?

"A That's right.

"Q But once that agreement was signed, Exhibit 7, then you believed your personal assets could be at risk?

"A Depending on what happened in the handling of the case from there, which would be a dependent condition and not an independent one.

"Q Well, you've already told me that if the Supreme Court reversed the trial court then you'd be right back where you were originally?

"A Right.

"Q You'd have the same risk at that point in time that you had before the trial.

"A Right.

"Q Okay. But if the Supreme Court affirmed the trial court, which happened, did you have any understanding that if that occurred that your assets, personal assets, would never be at risk?

"A I had the feeling there may be a risk.

"Q And why, under what circumstances?

"A Well, I guess you're asking a lot of questions I don't know the answers to, but I don't know the legal system that way.

[203] "Q I don't care about your legal process or anything else. I just want to know what was going on in the mind of Mr. Campbell.

"A Well, I did not feel secure as long as that judgment was outstanding, because that was a judgment against me. And as long as it was outstanding I was liable for all that, regardless of what else happened. And that agreement that we made could have been broken in several ways, I suppose. I never checked it out.

"Q Did you ever ask your lawyers, Mr. Hoggan and Mr. Jensen, when you signed that Exhibit 7, did you ever ask them, 'Now that we've reached agreement, can my assets ever be at risk again?' Did you ever ask them that?

"A No, I never asked could they ever be at risk. But he said that it was clear now. But he said that it's clear now.

"Q It's clear now what?

"A It's clear that they're not exposed now.

"Q And certainly you believed, once you signed that agreement, Exhibit 7, you believed that your assets were not at risk, at least until the Supreme Court ruled. Is that a fair statement?

"A I think that's a fair statement.

"Q And if you had an understanding, I want to [204] know what it was. If the Supreme Court affirmed, as it did, and if State Farm had not paid the judgment in full, as it did, what was your understanding? Did you believe your personal assets could be at risk if State Farm refused to pay the judgment in full?

"A Yes, I did.

"Q Did you ever talk to Hoggan and Jensen about that?

"A I don't remember whether I did or not.

"Q Did you ever ask them that question?

"A I may not have asked them that question, I don't know. I don't recall it.

"Q Did they ever tell you, 'Mr. Campbell, if you sign this agreement and you assign your claim against State Farm, even if the Supreme Court affirms that judgment, Ospital and Slusher will never go against your personal assets'? Did they ever tell you that?

"A No.

"Q They did not tell you that?

"A Not that I recall.

"Q And you did not ask them that question? Is that true?

"A I don't recall whether I asked them that question.

"Q Didn't those lawyers -- I'm asking you to [205] try and think back and refresh your memory. Didn't those lawyers, Hoggan and Jensen, make it clear to you that if you assigned your claim against State Farm that Slusher and Ospital would never try to collect any part of that judgment from your personal assets? Didn't they tell you that?

"A If they did, I don't recall it. They may have done, but I don't recall that kind of statement. It could have been that, because I didn't, because I didn't feel that confident about it, I don't know.

"Q As we sit here and talk, wasn't that the reason your lawyers were negotiating with Ospital and Slusher's lawyers, was so they could make sure that Mr. Campbell's personal assets would never be at risk? Didn't they tell you that's what they were trying to accomplish?

"A Yes, but I never -- I never had the feeling that they would never be at risk. I had the feeling that there were no immediate risks.

"Q Now, you told me some time ago, I think, in the course of this deposition -- Well, let me ask you this. When did you believe that Mr. Humpherys became your lawyer?"

MR. HUMPHERYS: Mr. Humpherys says, "For the purposes of the bad faith case?"

[206] MR. CHRISTENSEN: "No, the purposes of the bad faith case, yes."

MR. HUMPHERYS: Mr. Campbell answers:

"A I felt that when we signed that agreement, that that potentially existed at whatever time seemed right. Now, I don't have a specific date on that.

"Q You don't know, then, either in this deposition, you said it was your understanding that -- "

MR. HANNI: Start again on that, okay?

MR. CHRISTENSEN: Did I foul it up?

MR. HANNI: Yeah.

"Q You don't know, then -- Earlier in this deposition you said it was your understanding that until the Supreme Court ruled, that Mr. Humpherys would not be your lawyer on the bad faith case? Did you say that?"

MR. HUMPHERYS: Mr. Humpherys says, "Object to the representation. Go ahead and answer.

"Q No, I'm not representing. I'm asking you, did you say that earlier in this deposition?

"A I don't think so.

"Q You don't think you said that?

"A No.

"Q Okay, the record will speak for itself on that. But now you're saying that it was your understanding that after you signed the agreement, [207] Exhibit 7, that whatever time it became appropriate Mr. Humpherys would become your lawyer on the bad faith claim?

"A Right, I think that's right.

MR. CHRISTENSEN: All right, skipping to page 62, line 10.

MR. BELNAP: Excuse me, skipping to page 62?

MR. CHRISTENSEN: Sixty-two, line 10. Are you okay?

MR. HUMPHERYS: I'm okay now.

"Q You don't recall ever being told that State Farm had offered to pay?

"A I don't remember it.

"Q Okay. Do you have anything in writing from either Hoggan and Jensen or your present attorney, Mr. Humpherys, that deals with State Farm saying it would pay those judgments in full with interest and costs if the Supreme Court affirmed?

"A If I have, I don't recall it."

MR. CHRISTENSEN: Now I'm skipping to page 65, line 11.

MR. HANNI: Hold on just a second.

"Q Now, Mr. Campbell, you, of course, were concerned about that judgment, weren't you?

"A Yes, I was.

[208] "Q And if somebody had told you, "Don't worry, State Farm will pay that judgment in full with interest if this thing gets affirmed on appeal," that would have been something pretty important to you, wouldn't it?

"A I think it would.

"Q It would have been something that you would have wanted to have heard, and something you would have wanted to remember, right?

"A I think so.

"Q But as you sit here today you have no memory of anybody ever telling you that State Farm, since 1986, had stood ready and willing to pay that judgment?

"A I don't recall hearing that.

* * *

"Q Now, going back, Mr. Campbell, to an original question that I asked you. In view of the fact that State Farm said they would pay the judgment in full, both judgments, and that they did that in 1986, I asked you how you -- And that they, in fact, did pay it in 1989 after the Supreme Court affirmed the lower court, I asked you how you were damaged, and you started to tell me about Paul King and what happened with Paul [209] King. Now, tell me in what other way you felt you were damaged.

"A Well, the emotional stress on me and my wife has been a heavy burden.

"Q And that's because you felt that at some point your personal assets might be at risk; is that right?

"A Well, yes, that's part of it. But the defamation of character that came out of the trial really is bothering me.

"Q And in what way do you feel that there was a defamation of character?

"A Having established in the court that I passed six vans that was spread out over a mile's distance, and proceeding, and the vans were proceeding at 60 miles an hour, that would be a fragrant violation of law for me to do that.

"And if I were in the habit of breaking the law deliberately, I probably wouldn't have been so sensitive. But I try to be a law-abiding citizen, and I like to uphold the law as far as I can.

"Q Okay, but you, in your mind, didn't do that, did you?

"A I didn't. Well, but if that's reported, that that's the circulated evidence that is submitted to [210] the people that I have to work with, that's the burden I have to carry.

"Q Okay. In what other way, in view of State Farm's promise to pay, and the fact they did pay those judgments, do you feel you've been damaged, other than the incident with Paul King you've told us about, and the fact you didn't

like evidence coming out that you had passed six vans going 60 miles an hour? In what other way were you damaged?"

MR. HUMPHERYS: Mr. Humpherys says, "Other than what he's talked about?

"Q Yeah, other than what you've told me about.

"A Well, there's a lot of emotional stress that goes in trying to cope with it through these problems, and I've lived through it, and it's been very destructive to me.

"Q Is it fair to say that the main thing that caused you emotional distress is that you felt that at some point in time your personal assets could become at risk?

"A That's caused some stress, but I think I felt more the discredit to character and reputation that came out. That's how I felt.

"Q In other words, if I'm understanding you right, you feel because you lost the lawsuit in the [211] lower court, the jury didn't believe your version of what happened. Is that what you're telling me?

"A That's what I'm saying, I think.

* * *

[214] * * *

"Q All right. You've given me some reasons why you believe that you have been damaged here, even though State Farm paid the judgments in full. Tell me in what other way, other than what you've told me.

"A This has been stressful to me. It's been very stressful to my wife, and caused lots of problems that I've been concerned about, and was concerned about. I think that we've got that pretty well behind us now.

"Q Okay. It was only shortly after that --

MR. CHRISTENSEN: Excuse me. Okay.

MR. HUMPHERYS: Mr. Campbell says, "It was only shortly after that that we, after the accident, that we had to get her on high blood pressure medicine.

"Q And that concerns you?

"A Sure, it does.

"Q And how long did it take to get that resolved?

"A Well, I think she's been off and on blood pressure medication for about a year, now."

MR. HUMPHERYS: And Mrs. Campbell says, "Not totally.

"Q All right. So other than the fact that Mrs. Campbell had to get on high blood pressure medicine, are there other ways in which you claim that [215] you were damaged?

"A Well, you get into a problem of, things like this can be very depressing to a person, and it has to me, and it has to her, too. And the total scope on that is very hard to identify, but it's been very depressing.

"Q You mean the mere fact that you got sued in the first place?

"A Right.

"Q That distressed you considerably, didn't it?

"A Well, the whole thing, getting sued in the first place is one thing, but how it's been handled, you never get over it.

* * *

[216] * * *

"Q Have you -- Let me ask you this. Do you still have essentially the same assets now that you did have right after the trial of this case?

"A Yes.

"Q You told me that you had a cerebral hemorrhage a number of years ago.

"A Right.

[217] "Q When did that occur?

"A 1970, June of 1970.

"Q I gather you were hospitalized for that?
"A In University of Utah Medical Center.
"Q And how long were you there?
"A About six weeks.

* * *

"Q Now, since this accident, have you been in a hospital for anything?
"A No, but I'm going in next Wednesday.
"Q You are? What for?
[218] "A hernia.

* * *

"Q Has there been any, as far as you can tell, any adverse effect on your health at all since this accident?
"A Well, I'm on Sinemet, 25/250 now, which is for Parkinson's syndrome, and the doctor felt that this was a, the need for that was a consequence of a combination of stress and a previous cerebral hemorrhage [219] combination.
"Q This is Dr. Hurst?
"A Yes.
"Q When did you go on that medication?
"A About a year ago. The condition's been developing noticeably for two or three years."

* * *

[220] * * *

"Q All right. Now, as far as your health is concerned, you talked about taking those pills for the Parkinson's disease, and that your doctor thought it might have something to do in part with stress and your prior cerebral hemorrhage.
"A Right.
"Q Apart from that, has your health been affected in any way, in your mind, as a result of this lawsuit or anything connected with it?

"A Not specifically, but there's a general deterioration which seemed to be faster than I would expect, faster than the doctor had anticipated when I talked with him earlier, and that's a little hard to nail down, but I don't -- And so I wouldn't want to try to nail that down any tighter than that.

* * *

[221] * * *

"Q I see. What was your health like before the cerebral hemorrhage?
"A I was a practicing engineer, and had good communication and physical ability. I had, previous to that, three years prior to that I'd had bleeding ulcers. When you get into intensive engineering programs you can get into a fairly stressful situation, and the stress I had been under in my previous work had contributed to those problems.
"And after my cerebral hemorrhage, and then went into electrical construction because I could not longer perform effectively as an engineer. And I figured that I had, that gave me an opportunity to build my physical stamina substantially, and I did very effectively improve immensely from that time until the time of the accident. And that leveled off, and the last few years have been quite a bit on the downhill run.

* * *

[222] * * *

"Q In general, then, I guess what you're telling me is, most of your health problems have been related to this cerebral hemorrhage you had in 1970?
"A That made the biggest single impact, and then I'm not very adapted to stress any more. Stress has been very hard for me since then.
"Q Since your --
"A Cerebral hemorrhage. Of course, along with that, I had to learn to talk and to walk again, and the doctor that was taking care of me at that time told me I'd never go out of a wheelchair.

"Q But you did.

"A I wouldn't stay there.

"Q And you learned to talk again?

"A I don't talk very well, but I do talk.

* * *

[223] * * *

"Q I'm going to show you Exhibit 19, and let me describe that for the record, if I may, before I give it to you. This appears to be a letter from Miles Jensen [224] to Mr. Humpherys and Mr. Barrett dated December 19th, 1983, and it indicates a copy was sent to you. Would you just look at that and tell me if you got that, got a copy of that?

"A It was the one that set up the January 6th meeting.

"Q You did get a copy?

"A Yes, I did.

"Q And as a part of that, it says this would also confirm my understanding with Rich 'that he would not, prior to this meeting, take any action of collection as against Mr. Campbell, that this will not preclude him from garnishing Mr. Campbell's insurance policy and proceeds for the same.' Now, that just confirms what you've told me before --

"A I think so.

"Q -- that during this negotiating period it was your understanding there would be no effort to try and collect these judgments out of your personal assets.

"A That was my understanding. I think that just confirms it.

"Q Exhibit 7, which is the agreement of December 6th, '84, provides you will go ahead and prosecute this, cooperate to prosecute this bad faith claim against State Farm. And it provides that if you [225] recover any money that you are to use it, first of all, to pay costs and expenses and attorneys fees of litigation, and then secondly, you're to pay the judgments of Ospital and Slusher, and then thirdly it says,

'The balance shall be disbursed to the parties upon the following proportions, Slusher 45 percent, Ospital 45 percent, Campbell 10 percent.' Do you remember that?

"A Yes.

"Q Are those still the terms of the agreement as you understand it?

"A There's been no change that I know of.

"Q Now, let me ask you this. You have already told me, so I understand it, if you were to recover a substantial judgment in this case it's your understanding that Slusher and Ospital would get 45 percent of whatever is in excess of, those two, of the judgments against you?

"A That's my understanding."

MR. CHRISTENSEN: All right, now moving, I'm going to move to page 85, line 15.

MR. HANNI: Hold on just a minute. You're on 85, line what?

MR. CHRISTENSEN: Fifteen.

MR. HANNI: Okay.

[226] "Q Mr. Campbell, to this date has any effort been made by anybody to execute on or sell any of your personal assets to satisfy this Ospital and Slusher judgment?

"A No.

"Q As far as you know, no writs of garnishment have ever been served on any of your bank accounts?

"A No.

* * *

[229] * * *

"Q All right, were there other things that happened at the trial of the lawsuit that caused you emotional distress?

"A Well, yes.

"Q Tell me about that.

"A But it wasn't what State Farm did. That is what Scott Barrett did. On closing argument he called my wife a liar, and his way of doing it was not very kind or considerate.

"A I see.

"Q And the fact of the matter was, she had told the truth, and what he was presenting in his closing argument was a lie on the part that he was accusing her of. Obviously one or the other had to be a liar.

"Q I see.

"A That did cause me some distress, and I felt [230] a grudge against him for that.

"Q I see. Now, was there anything else that occurred at trial that caused you emotional upset?

"A On several occasions during the trial Rich spoke to Wendell to see if he wanted to make an offer, any offer about settlement, other than for any amount less than the policy limits, and he just brushed that off like that wasn't the way to handle the case. And it did cause me some concern.

"But my court experience, I had to say, 'Well, I hope he knows what he's doing.'

* * *

"Q Did you ever tell Wendell that you thought he should settle the case? Did you ever tell him to do that?

"A I don't think I did. I was looking to him for guidance. Whenever we talked, when he said -- He'd tell me something, I'd say, 'What's the risk?' And he'd say, 'It couldn't be more than 5 or 6 or 7 percent at the most. And if the court awards a half million [231] dollars, 10 percent of that would be $50,000.' And so he felt that proceeding with it on that basis would make it, in any event, it would be less than the policy limits."

* * *

[232] * * *

"Q Did you, Mr. Campbell, ever feel that anything you did caused that accident, or set up events that brought it about? Did you ever feel that way?

"A I don't think I ever did.

"Q And as you sit here today, do you, in your own mind, feel that you did anything that caused or contributed to that accident?

"A From my position, and what I saw, the answer [233] is I don't think I did anything to contribute to the accident. If anybody else saw different, they have to tell them. I didn't feel, and haven't felt that I did anything to cause the accident."

* * *

[236] * * *

"Q Did you ever get the impression that Wendell, working through your lawyers, Hoggan and Jensen, was assisting in trying to get this agreement made between you and Slusher and Ospital?

"A I think that anything he was, was encouraging of it.

"Q So it was your impression that he was encouraging Hoggan and Jensen to work out an agreement with Ospital and Slusher that if you assigned your claim for bad faith, that they, in turn, would not try to collect those judgments out of your assets?

"A That's the way I interpreted it.

* * *

"Q Now, the Supreme Court decision in this [237] case, were you made aware of that very shortly after it came down?

"A Yes, that was sent to Wendell, and Wendell sent it to Brent Hoggan, and Brent sent it to me.

"Q So you would have had a copy of that very soon after it got --

"A Yes.

"Q -- decided? Okay. From your viewpoint, were you hoping that the Supreme Court would reverse the case, or did you want it affirmed? What was your hope in that matter?

"A I think my hope was, like it was right from the beginning, I'd like to get this settled and over with.

"Q Did you hope that the Supreme Court would reverse it, or do what it did?

"A I don't think I took any strong position on that, either way.

"Q Had you known that State Farm in '86 had made an unconditional statement it was going to pay those judgments with interest and costs, and that it made those statements in court, open court, had you known that, then you would have known that if the Supreme Court did what it did, affirmed the trial court, that your problems were over, wouldn't you?

[238] "A It sounds like it.

"Q And you would have known that your troubles would have been over, right?

"A If I'd understood it that way, yes.

* * *

[244] "Q Now, when were you -- You were obviously in the Utah area when the accident occurred. Were you basically retired at that time?

"A No, I was still running my electrical contracting business.

"Q Did you formally retire before being called on a mission?

"A My goal had been when I reached age sixty-four I want to be on a mission. And that's what I was working to, was getting to that point.

"Q And basically your goal was, then, to retire and be able to go on a mission?

"A Right.

"Q When did you turn sixty-four?

"A The day I was set apart to be a missionary.

"Q And when was that?

"A That was in 1982, February 23rd, 1982.

"Q And where did you go on your mission?

"A Minnesota.

"Q While you were there, you did receive some correspondence from Wendell Bennett, and you sent some letters to him; is that correct?

"A Uh-huh. You'll have some copies in that stuff you've got somewhere.

"Q When did you return back to Utah?

[245] "A That would be the last of August, in '83.

* * *

"Q And I take it, from what you've testified about, that you were not critical of Mr. Bennett until after the trial; is that correct?

"A I felt in every sense supportive of what he was doing, and I've always had, and still have a lot of respect for Wendell. But I did feel that he undersized the job he had, and handled it accordingly.

"Q You don't think for a minute, do you, that he was intentionally trying to cause you any distress?

"A If you read the letters he wrote me, they were words of encouragement to me.

* * *

[246] * * *

"Q Now, you remember returning to the Utah area around August, end of August, 1983?

"A Uh-huh.

"Q Do you remember then getting together with Wendell Bennett and discussing the case?

"A We got with him, yes.

"Q Did Mr. Bennett review with you the pretrial discovery that had taken place?

"A No.

"Q You deny that he reviewed that with you?

"A He said very little about it. He did give me a little information, and his comments were very [247] brief relating to being at the trial, and he planned on having me and my wife as witnesses. And I asked him -- I did ask him what other witnesses he was planning on. He said he wasn't planning on any, and he said he felt like he'd handle everything else that came up through cross examination.

* * *

"Q In this meeting on August 30th, 1983, Mr. Bennett told you, did he not, that the Ospitals and Mr. Slusher both had made a demand to settle with you for the policy limits.

"A Yes.

"Q And how did you respond?

"A How did I respond?

[248] "Q Right.

"A I said, 'What is our risk?' And then again he said, 'Something between 5 and 7 percent.' And I said, 'Does that keep us within the policy limits?' He says, 'Should be well within that. We should not have to pay any over the policy limits.'

"Q Did you suggest to Mr. Bennett that you didn't want to consider settlement, but that you basically wanted to vindicate yourself?

"A I told -- I reminded him, 'I took out insurance because I didn't want to have to pay anything myself. And beyond that, if State Farm felt there was no risk, it's up to them to do what they wanted.'

"Q Well, wasn't it important to you to basically be able to vindicate your account of the accident and what happened out there?

"A Not that I remember.

"Q Did you ever encourage Mr. Bennett to explore the possibility of settlement?

"A I had never been involved with a car accident before in my life, never had anything to do with filing claims for anything. This was the first time around for me. Now, I admit there's a lot of things I should have known that I didn't know.

"Q Well, so my question is, did you ever [249] encourage Mr. Bennett to explore the possibility of settlement with Slushers or Ospital?

"A I don't think I pushed that at all. I was looking to him to tell me what I should do.

* * *

"Q And had you been encouraged to retain other counsel if you wanted to do that?

[250] "A I asked Wendell if he thought I ought to. He says, 'I don't see any need for it.'

"Q When did you ask him that?

"A I think one time I asked him, that would be on March the 17th when we met with him. That's the first time we met with him.

* * *

[255]MR. HUMPHERYS: One question.

"Q I have one question. After the jury verdict came in on Monday evening, the 20th, do you recall what discussions took place between you and Mr. Bennett on the way to the airport, and if so, please relate.

"A He said, 'I'm sure that State Farm will pay their policy limits, but the rest of it is up to you.'

"Q Did he indicate anything about putting a for sale sign on the property?

"A Well, when he says, 'It's up to you,' that includes, 'You may want to put for sale signs on your property to get things moving.'"

MR. CHRISTENSEN: All right, now Mr. Hanni asks some questions.

"Q Say that again.

"A When he came in for that last day, which was Monday, he flew in, parked his plane at the airport, and we picked him up there. But after the verdict was in, and took him back to the airport, he commented about he was sure State Farm would pay their policy limits, but he felt that I could expect to have to pick up the rest of it. And then he commented, quote, 'You may want to put a for sale sign on your property now.' End of quote.

"Q What was your response to that?

[256] "A I don't know that I responded.

"Q There was one thing I neglected to ask you, Mr. Campbell. Do you have children?

"A Yes.

"Q How many?

"A You want the ones I adopted, as well as the ones that were born to me?

"Q Uh-huh, I do.

"A I have six adopted, nine born to me, and three step-children.

"Q Are they all grown and all raised now?

"A The youngest one is -- "

MR. HUMPHERYS: And then Mrs. Campbell said, "Two died in infancy."

And then Mr. Campbell said, "Two died in infancy."

"Q Okay, I gather this is a second marriage for you?

"A No, this is my fourth marriage.

"Q Fourth marriage, okay. How many children did you have by your first one?

"A Nine.

"Q And did your wife, what happened, did she die?

"A She died.

[257] "Q And then you married again?

"A Yes. And then we had the cerebral hemorrhage, and I wasn't the same person I was, and she divorced me.

"Q I see. You had no children by her?

"A One.

"Q Had one by her?

"A Uh-huh.

"Q And then what happened?

"A That would be -- "

MR. HUMPHERYS. Mr. Humpherys says, "That would be eight from the first marriage?"

And Mr. Campbell said, "Nine from the first.

"Then that would make ten if you had one from the second."

Mrs. Campbell said, "You had eight, honey. Six lived and two didn't. Six and two is eight."

Mr. Campbell said, "Okay, it was a total nine plus two. Nine born to me and two that died.

"Q Okay, all right. And so the third, then the third time you married, what happened to that marriage?

"A She died from cancer.

"Q Then following that, your marriage to your present wife?

"A Right.

[258] "Q And does she have children?

"A Three.

"Q Three of them, that's the step children you're talking about?

"A Right.

"Q That's all."

* * *

[Vol. 9, R. 10264, commencing at p. 204]

* * *

CURTIS B. CAMPBELL called as a witness by and on behalf of the Plaintiff, [205] having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

Q Mr. Campbell, we read your testimony that was taken about six years ago in this case. I want to ask a few followup questions.

Would you please explain to the jury what happened to your first wife. In the deposition testimony you indicated she died. Would you please relate what happened?

A I got a call at work one day, and they told me to the house, to go home. And it was one of the neighbor ladies that called me, and I went home and found the police took the body, and it had been taken over by the police department. And I was told my wife had been shot.

And in checking around we found that my pistol, which had been in my drawer upstairs, was missing. And then I asked them, "Where is her car?" Well, they hadn't seen a car. But the person who was there when she came home, he shot her and took her car.

Q Thereafter did the social service department of the state -- Which state were you living in at the time?

[206] A Washington.

Q Washington? Did the state then do anything as it related to your children?

A It was a day or two before they came out to pick them up, and said they'd come prepared to take the children. I couldn't stand that, so I told them over my dead body they'd do that. And after they went and decided that we had things under control.

Q You're still alive, so apparently you got to keep your children?

A Yes, I did. I've had two of them here today.

Q How old was your youngest at the time?

A Seven months.

Q Now, we've heard from your deposition testimony about your second and third wife. Are you currently married to Inez?

A Right.

Q And do you remember approximately when it was that you were married?

A That was June 27th, 1979.

Q You're doing better than your brother. Okay. I want to draw your attention to the time of the accident that occurred in May of 1981. Now, Mr. Campbell, do you believe that that accident was caused by your fault?

[207] A No, I do not.

Q Have you always maintained that belief, that it was not your fault?

A That's right, that's the position I've had all the time. I'd be glad to explain why if you want me to.

Q Go ahead and explain to the jury why.

A I had, at an earlier date, investigated that Mercury Bobcat car for stability, because I had contemplated getting one myself. And I changed my mind, because the accidents that were, the record showed in Fortune Magazine. And they had a rather complete writeup about the trouble the Ford Motor Company was having because of the instability of that vehicle.

And as I approached the car coming, it exhibited some of those conditions. And as I had studied the details of investigating that car, as reported in Fortune Magazine, and I'd done more investigating because of my interest in buying one, we, I'd gone to the analysis of speed and the characteristics involved.

And when Trooper Parker was out there, I monitored carefully everything he did, and he did things the way that I had learned I should do them. And when he got through with his analysis and told me that the [208] car was doing essentially 80 miles an hour, that was within a couple of miles from what I had come to already.

And so knowing the car and the situation, and back along the line, there, I noticed the car, the van pull out quickly into, like they were going to pass, and there wasn't room so they got back in where they belonged. And Todd Ospital had started to slide at the same time, at the same point that car had pulled out, that van had pulled out.

And of course he veered to the right, and began losing control of his vehicle, and he got to swing back towards the left and went over into Ospital's van.

Q Mr. Slusher's van?

A Yeah, Slusher's van. And the one thing that has been missed through it is, when people tried to talk about this, how many cars were in between Slusher's van and where I was, and you have to take a look at that. I can't tell you exactly how many, but I can tell you about eight of them, because I started counting this. I don't know how many, but I could identify eight.

Q All right, now, let me ask you, Mr. Campbell, did you have communications with Ray Summers, the adjuster for State Farm, shortly after the accident?

A Yes, I did.

[209] Q Did Mr. Summers indicate to you that you were not at fault?

A Yes, he did indicate I wasn't at fault.

Q Later, when a lawsuit was filed by Mr. Slusher, did Mr. Bennett, or was he hired to represent you by, was he hired by State Farm to represent you?

A Yes, he was.

Q Did he ever -- Or what did he tell you regarding whether you were at fault or not?

A Whenever he spoke to me on May 5th, he said it looked like it was a complete clear case, that I had no fault.

Q Did Mr. Bennett ever explain to you that there was adverse evidence which would indicate you might be found at fault?

A No, he didn't.

Q When was the first time that you heard adverse evidence that you might be found at fault?

A When we were at the trial.

* * *

[210] * * *

Q Did Mr. Bennett, did you ask Mr. Bennett, "What about this adverse evidence?" during the trial?

A Yes.

Q And what did he tell you?

A He said -- I asked him who he had for witnesses. He indicated he had me and my wife for witnesses, and so other questions I had, and he said he'd handle it by cross examination. He was completely thorough on that.

Q Did Mr. Bennett ever suggest that you hire a separate attorney to represent you?

A I'd asked him two or three times what he thought about it.

Q And what did he tell you?

A He said there's no need.

Q He said there's no need?

A No need.

* * *

[211] * * *

Q Mr. Campbell, did he ever discuss with you the fact that there could be an excess verdict against you?

A He said that, he talked about that. He said that if there's any judgment against me it would be well within the limits of the policy I had.

Q If there was a judgment against you, it would be well within the policy limits that you had?

A Yes.

Q Did you ever insist and require that State Farm try this case?

A No, not that I ever remember. If they got that impression from me, they totally misunderstood me.

Q Was it your desire to have this matter resolved?

A Yes, that's -- One way or another.

Q Was it important to you that the case be tried, no matter what?

A No.

[212] Q When Mr. Bennett told you that you had, that there was not a problem, that you were in the clear, and you didn't have exposure, did you rely upon that?

A I did rely on it.

* * *

[215] **CROSS EXAMINATION BY MR. HANNI:**

* * *

Q (BY MR. HANNI) You were in court last Tuesday and last Friday; is that right?

A I was here Friday.

Q And you were here today, you've been here since about noon, or before.

A Right. Yes.

Q Now, Mr. Campbell, during that time you have heard one witness after another get on that stand up there, and in response to questions that your lawyers are asking, they have been testifying that you passed six vans. Did you hear all that?

A I've heard that lie told quite a few times.

Q Are you, today, as you sit here, after listening to all those witnesses, are you prepared to tell this court and jury what those witnesses said is true, that you did pass six vans?

[216] A I did not pass six vans.

Q And you have always said that; isn't that true?

A That's right.

Q Now, would you like to tell this jury, in your own words, Mr. Campbell, after hearing all those people up there saying you passed six vans, tell them in your own words how this accident happened.

A If a person would try to duplicate what they said on passing six vans, they would know it couldn't happen.

Q You couldn't have done it.

A I couldn't have done it.

Q Now, you heard one witness say that they were spread out for a whole mile up that road, up Sardine Canyon.

A That's about what they were between the front and to the last one.

Q And that witness said that you passed all of them.

A And the distance that you had to pass them in, to be, would be about two miles. And if you would have passed six vans like that, spread out over a mile and passed all of them in a two-mile distance, you've got to go twice as fast as they have.

[217] Q Now, Mrs. Campbell was with you, wasn't she, on the day of this accident?

A Yes, she was.

Q If you had passed six vans, like the witnesses who answered questions in response to your lawyer's questions, what do you think Mrs. Campbell would have done?

A I'd have heard about it.

Q Did she say anything to you while you were allegedly passing these six vans that were strung out a mile?

A Not a word.

Q Not a word. Mr. Campbell, you have told your story many times, have you not?

A Several, yes.

Q And your story has always, from day one, been very consistent, has it not?

A Yes, it's been very consistent.

Q Now, why don't you just tell this court and this jury, just as best you can, what you really did do.

A I was traveling from Brigham City to Logan, and this Dry Lake area is in the top of the mountains going to the summit in two places.

And I, at the top of the hill coming up from Brigham City, there's some highway buildings. And as I [218] approached that, a pickup with a camper on the back of it pulled out onto the road.

Q All right. So you were behind -- Let me just help you a little bit.

A So I was behind him, and he -- I was first behind, or I was close behind him. And soon I was first behind him.

Q You were immediately behind this pickup that had a camper on it?

A Right. As we went down into Dry Lake area.

Q And how fast was he going, that pickup?

A He was starting up, then he stopped, so he was pretty slow. I thought he'd speed up as he went along, but by the time I got across the Dry Lake he was doing about 45 miles an hour.

Q And he was going around that, 40, 45 miles an hour, when you started to go around him.

A Right.

Q And was there any cars coming from the other direction when you did that?

A Not when I started to pass him. But --

Q And you could see up there for how far?

A Oh, from that point I could see all the way up to the top of the hill.

Q And that had to be about a half mile, didn't [219] it?

A Or more.

Q Or more. And there was no car coming from the opposite direction when you pulled out around this camper.

A Right.

Q Now, as you were in the process of passing the camper, did you see a car come from the other direction?

A Yes. Yes, there was another one coming from the opposite direction.

Q And did you see him as he came up over the hill?

A Yes.

Q And at that point in time, were you in the process of going around this pickup with the camper on it?

A Right, I was.

Q And how fast were you going at that time?

A Well, I was right behind the camper, so I was doing the same speed he was, he was doing 45.

Q You had to speed up a little bit to get around him?

A Yes, I had to speed up.

Q What happened when you saw this car come over [220] the top of the hill about a half a mile away?

A I, my first impression of it was it looked like it was awful, he was bouncing around, changing quite a bit like he -- But that was my first impression. And then my second was, "That isn't careful, that speed."

Q Did you get the impression, after you watched him for a little bit, that the distance was closing faster than you thought?

A Yes.

Q And so what did you do when you saw that?

A I pushed down on the gas toward the floor board, because it's too far around to do anything else.

Q And did you, when you started speeding up, did you get around the pickup with the camper on it?

A Yes.

Q And were you able to get back in your lane of travel?

A Yes.

Q And was it your observation that this car that you saw at the top of the hill closed the distance much faster than you thought?

A Yes.

Q And did you form any kind of an opinion as to how fast you thought he was going?

[221] A Yes.

Q What was that?

A I think he was going about 75 miles an hour.

Q And were you completely back in your lane before the Ospital car passed you?

A That was my opinion, that I was.

Q Did you pass any more vehicles than that pickup and that camper?

A No.

Q Just that one?

A Just that one.

Q Now, the weather was good on that day, wasn't it?

A Very good.

Q And this accident happened on May 22nd of 1981?

A Right.

Q It was around 8:00 o'clock at night?

A Or a little earlier.

Q Or a little earlier?

A I don't know exactly.

Q It was daylight at the time, right?

A Yes.

Q And nobody had to have their headlights on?

A Nobody had to have their headlights on at [222] that time.

Q After you got around, did you go on up to the top of the hill?

A Yes, I watched out of the rear view mirror, and I saw the van pull out to pass like I had done, and he determined he didn't have room enough to pass, and immediately pulled back into the line.

Q And did you, when you went on up the top of the hill, did you then come on back?

A That, at that point where I was at, when that car was going down the hill, it veered to the right, and then corrected from that and veered to the left. He was uncontrolled when he went to the left.

Q And was he way past you when he veered over to the right?

A Well, there was quite a ways past me.

Q And that accident actually happened right down in the bottom of Dry Lake, didn't it?

A Pretty close to it.

Q And you were where on the hill? You were up the hill a ways, were you not?

A I said there were several cars between me and Slusher's van. Slusher was in a van, yes. There were, between me and Slusher was about eight cars.

Q There were about eight cars between you and [223] Slusher at the time of the accident.

A Right.

Q All right. So what did you do then?

A Well, I pulled up, I saw where we were, what had happened. I asked my wife to watch for any details, and I pulled up, we pulled off to the side so the cars behind could pass. And I did that, I pulled up to that area and pulled off to the side and let the cars pass me.

Q This was after you got up to the top of the hill.

A Well, I was up the hill far enough so I could.

Q Okay. And then after the cars passed you, what did you do?

A I turned around and asked to see if I could help.

Q Now, did you, your -- You were in some of the pictures that were taken by the highway patrol that evening; is that right?

A Yes. I had returned to that area so I could help.

Q Now, Mr. Campbell, when you went up the hill and waited for all these cars to pass you, and then you came back, did you think you were involved in that [224] accident at all? Or any part of it?

A No, I didn't.

Q Did you, did the highway trooper get your name?

A Yes.

Q And you gave a statement to the trooper?

A Right.

Q Did you --

A I don't know whether I gave a statement to the trooper. I stayed there and watched Trooper Parker go through his analysis of what evidence he could find, and his analysis was pretty close to mine.

* * *

[227] * * *

Q And you, in 1982, you actually went on a mission, did you not?

A Right.

Q You had a physical examination before you went on that mission?

A Yes.

Q And other than the fact that you had had this stroke, or cerebral hemorrhage twelve years earlier, you were essentially in good health.

A Right.

Q And Mrs. Campbell also went with you on that mission.

A Right.

Q You spent about eighteen months on it; is that right?

A Yes.

Q You were back in Minnesota at that time?

A Yes.

Q As a matter of fact, you didn't get back here until about August of 1983, just before the trial of the case up in Logan.

[228] A That's right.

* * *

[230] * * *

Q Now, did you have a physical exam, Mr. Campbell, before you went up on your mission?

A Yes.

Q In 1981?

A Uh-huh.

Q And then you came back, and in 1983 the Logan case was tried.

A Right.

Q And you and your wife went on another mission, did you not, in 1986?

A Yes.

Q And was that a -- How long was that one?

A One year.

Q One year? And the first mission was eighteen months.

A Right.

* * *

[237] * * *

Q Okay. Mr. Campbell, you recall when I first met you, I met you at a deposition in January of 1990 in my office?

A Yes.

Q Do you recall that?

A I remember that.

Q And that is a number of years after the accident.

[238] A Right, that was in March of 1990.

Q Or March of 1990, right. And during that deposition, I asked you if you had ever been told that State Farm had paid the judgments against you. Do you remember that question?

MR. HUMPHERYS: Your Honor, this is repetitious, and given the time, and we read at length that deposition, and we've all heard it. Must we go into it again? I object on repetition.

MR. HANNI: I'll be very quick, Your Honor. I'm conscious of the time, and I want to get this done.

THE COURT: All right, overruled.

Q (BY MR. HANNI) Do you recall in that deposition, Mr. Campbell, I asked you if you were aware of the fact that State Farm had paid the judgment, both judgments in full? And you remember your answer to me?

A I told you I didn't have any firm information on that.

Q Now, you told me, just to help you refresh your memory, you told me, did you not, that yes, you knew State Farm had paid the judgments, and I asked you, "When did you learn that?"

And you said, "Yesterday," the day before your deposition. Do you remember that? Do you?

A That sounds like about what it is.

[239] Q Okay. So then I asked you, "Well, how did you learn about that?"

And didn't you tell me that Mr. Humpherys told you? Isn't that what you told me?

A I don't remember, but I could have done.

Q But you do remember that Mr. Humpherys had told you the day before.

A Yes.

Q All right.

A And I suspect that I should have known quite a while before that. I had received letters or telephone calls, but I didn't, I couldn't pin a particular time it had happened at that time.

* * *

[240] * * *

Q (BY MR. HANNI) Mr. Campbell, we don't have a [241] very good copy of the medical records when you went on your mission in 1986, so I'm going to have to show you this one, and show your counsel, because the copies we have are not very legible of the other ones. But you have told us before you went on your mission in 1986 you did have a physical examination by a doctor.

A Yes.

Q All right. Now, I'm going to point to this exhibit, which is not an exhibit, yet, but which we'll try and make one, and there are a number of questions asked about it, and

it says, "Have you ever had," and then it asks a whole bunch of questions, and down here, number 49 says, "Treatment for emotional or mental illness?" And the column marked "no" is checked. Do you see that?

A That's right.

Q Okay. And the next question down below, which is question number 55, and it says, "How often do the following occur?" And the question is, "A feeling that people are not fair." And your answer is, "Rarely." Is that right?

A Uh-huh.

Q The next question, "Loss of temper." And the answer is "rarely"?

A Right.

[242] Q And the next question is, "Overwhelming stress and tensions at home." And the answer is "rarely"?

A Rarely.

Q And the next question on line 58 is, "Thoughts about suicide." And the answer is "never"? Is that right?

A That's right.

Q Okay. And our next question is, "A feeling that people don't understand you." Answer, "never"?

A That's probably right.

Q Wait a minute, I'm sorry. You didn't answer that one. I'm sorry. I misread that.

A Okay.

Q And the next question is, "Hopeless discouragement about," and it says "school or work," and the answer is "never." Right?

A Right.

Q Do you agree with that?

A I agree with that.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF DONALD P. CAMPBELL, JUNE 14, 1996

[Vol. 8, R. 10263, commencing at p. 4]

DONALD P. CAMPBELL called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

[5] * * *

Q And what's your relationship to Curtis Campbell?

A He's my brother.

* * *

[11] * * *

Q I appreciate that. All right. Now, after the excess verdict was rendered -- First of all, you weren't there when the verdict was announced, were you?

A That's correct, I was not.

Q Did you find out shortly thereafter?

A I did.

Q And tell me what you did.

A My sister called me and told me what the verdict had been rendered, and I said, "Well, I'll get with Curtis." So I went, I was in from the farm, from Idaho, I went immediately to Lewiston, and approached him there, and said, "Well," I told him that we needed to get someone else on board in this thing to help him. And told him that I was going to call Brent Hoggan and [12] his law firm and get an opinion and a feeling from them, which we did.

Q Would you describe, as you went over to Curtis Campbell's home that night, what type of condition he was in.

A He was very dejected. I'd never seen him so despairing and dejected and discouraged.

* * *

Q And were you able to witness the kinds of things that he was experiencing, at least while you were with him?

A Yes, I did.

Q And did he share with you what he was experiencing?

A Well, as we said earlier, Curtis is a private person. You had to pick up on those things. And it was clear evidence to me that it really was working on him. Both physically and mentally.

Q How about emotionally?

[13] A And emotionally.

Q Thereafter, for the next, oh, year or so, did you see any kind of degeneration in what you perceived to be his condition?

A Absolutely.

Q In what way?

A Every way.

* * *

Q Mentally, did you see a difference in his ability to mentally deal with situations?

A Absolutely.

Q In what way?

A Mentally and physically and emotionally. Curtis seemed to be in a state of confusion, of frustration, of anxiety, all of those played upon him heavily, I felt.

* * *

[17] * * *

Q Did Curtis ever tell you that he had told Mr. Bennett that, before the trial, that he wanted State Farm to settle the case?

A I don't remember him saying that. I don't remember. I was gone to the farm a lot, and was not there on the forefront all the time.

* * *

[18] * * *

Q Before the trial was held in September of 1983, did Curtis ever tell you that he thought this accident was his fault?

A Absolutely not. To the contrary.

Q Did Inez ever tell you that she thought this accident was Curtis' fault?

A No.

Q Since the date of the verdict in September of 1983, up to, right up to the present day, has Curtis ever told you that he thought this accident was his fault?

A No.

Q Has he told you that he didn't think it was [19] his fault?

A Certainly.

Q And has Inez told you the same thing?

A Absolutely.

* * *

Q Have you known Curtis to be the kind of a [20] person who would face up to responsibilities that came to him, and challenges during his life?

A I have never known him to do anything but face up to his responsibility. He's never turned away from his responsibility and position.

Q Do you think, based on your experience with Curtis, Mr. Campbell, that if he knew that this accident was his fault, that he would say it wasn't?

A Certainly not. He would tell the truth. If it was his fault he would have told it that way.

Q Even if it was painful to h[illegible]?

A Absolutely.

Q Did you know that there have been some witnesses come into this courtroom and testify in this case that they think Curtis basically has just duped himself into saying this accident wasn't his fault?

A I know nothing what's gone on here.

Q You wouldn't agree with that, though, would you?

A No, absolutely not.

* * *

[30] * * *

Q Okay. Curtis was a well-educated man; is that correct?

A Yes, he is.

Q As I understand, he had a masters degree in one of the science areas; is that true?

A Yes. He was an electrical engineer.

Q And that he was quite close to getting a Ph.D., in fact, at one time; is that correct?

A That's correct.

Q Back in 1981, as far as you know, was he capable of operating a motor vehicle safely?

A I'll say.

Q Okay. Based on your experience with your brother, Curtis, and his background and experience, do [31] you think he could have gotten mixed up about whether he was passing six cars or one car?

A Absolutely not.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF INEZ P. CAMPBELL, JUNE 19, 1996

[Vol. 10, R. 10265, commencing at p. 173]

* * *

INEZ P. CAMPBELL called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

* * *

[174] * * *

DIRECT EXAMINATION BY MR. HUMPHERYS:

Q Would you state your full name, Mrs. Campbell.

A Inez Preece Campbell.

* * *

[175] * * *

Q Let me just get a few foundational facts established. Tell us again when you were married.

A 27th of June, 1979.

Q And you are his fourth wife; is that right?

A I am, and I'm his last.

Q We hope so.

A I told him that when I married him.

Q Okay. When you -- Now, previous to that time you had a divorce; is that right?

A I did.

Q And when you married Curtis, what was your arrangement with him in terms of your personal assets [176] and his personal assets?

A You mean right at the day we got married?

Q No, I just mean as you were, began your life together as husband and wife.

A You mean what we had, or what we did with it? I'm --

Q What I'm trying to ask, you each brought into the marriage your separate property.

A Yes, we did.

Q What did you do, then, with your separate property? Did you continue to maintain it separately, or did you try and join it together?

A Oh, we, I guess we maintained it separately, if you put it in those terms. We worked together right from the beginning on what we were doing. But his property was still in his name, and my property was still in my name until a little later.

Q And then what was your intent thereafter?

A We, everything was put together.

Q Now, when you eventually -- Was there a reason -- Now, let me back up. Is the house you're now living in the house that was yours before the marriage?

A Yes.

Q And the house that he was living in, was that the Richmond property that we've talked about that he [177] was selling?

A He sold it after, oh, it was several years after we married.

Q All right. I guess you couldn't live in two separate houses. But at the time of the verdict, that had been sold and was coming in on a monthly payment schedule, as we talked about previously?

A It was in escrow, yes.

Q Okay. Now, you've indicated it was your intention, and you did eventually join your properties together. Was that true of your Lewiston property?

A Yes.

Q Do you recall about when that was transferred?

A I think it was in January or February of 1982.

Q All right. Let me show you a copy of a deed, and it is marked Plaintiff's Exhibit 123. Do you recognize that?

A As far as I remember, I do.

Q And is that the deed where you transferred your home into both yours and your husband's name?

A It looks like it.

Q And what is the date on the deed?

A You mean down here on the bottom where it [178] says, "State of Utah on the 24th day of February, 1982"?

Q Now, the accident occurred in May of '81?

A Yes.

Q Does that sound about right?

A Yes.

Q And the trial was in September of '83.

A Correct.

Q At the time --

MR. HUMPHERYS: I don't believe there's an objection, we offer it into evidence.

MR. HANNI: No objection.

THE COURT: Received.

(WHEREUPON Exhibit Number 123 was received into evidence.)

Q (BY MR. HUMPHERYS) I'll put it up on the screen for just a moment so the jury can see it. Now, this is your signature, is Inez Seamons, correct?

A It used to be.

Q And you're transferring it to both Curtis B. Campbell and Inez P. Campbell. That was your maiden name --

A No, that was my first married name.

Q I'm sorry, first married name. And now, at the time that this was transferred on February the 24th, 1982, was there a reason it took a few years before you [179] transferred it over to Curtis' and your name in joint tenancy?

A Well, I don't know if there was a great reason why we didn't hurry and do it, Rich. The reason we did it at that time was the property was supposed to have been mine through -- It was not paid for, and it was supposed to have been mine, with me to finish paying the property off. And -- At the time of my divorce.

And my first husband had borrowed money on that, that a second mortgage from an individual that I was not aware of that he had done, and after I married Curtis and then we moved back --

When we first married we moved to Curtis' home in Richmond. And then we decided to move back to my home. And when this individual found that we were living there, then he come to foreclose, because my former husband had not been making the payments.

Q Who was it that had to assist in paying off that mortgage which your first husband left on the property?

A Curtis did it.

Q And did he then go back to work for the purpose of paying that off?

A Well, he was already working, Rich, but he really, what do you want to say, put the coals to it and [180] got busy, and he collected money that he had coming, he put in a lot of extra hours to bring that money together.

Q And so through his work he was able to pay that mortgage off?

A He did.

Q Now, at that point in time, then, did you transfer the property, once the mortgage had been paid off?

A Yes.

* * *

[181] * * *

Q Now, I want to ask you a few things before I come back to this property. Did Curtis, in his life prior to your marriage with him, have an occasion where he lost a substantial amount of his financial estate?

A He lost it all. He was put out of his home with three children, three pans, and two blankets.

Q About how long ago was that?

* * *

A Probably in about 1971 or two.

Q And when you married him, did he have a lot of assets, other than his home in Richmond?

A He had his home there that was paid for, and he had built it himself, so he paid for it as he went, and then he had his business supplies.

* * *

[182] * * *

Q All right. Tell us a little bit about Curtis before the verdict. Was he one who questioned? Was trusting? Was skeptical? What type of personality was he?

A He's a very, very private man, and that's been one of the things that we've treasured most in our marriage, that we're both very private -- We used to be very private people, let me say it that way. We don't have much left that isn't public any more.

And he's a very gentle, very kind, very considerate, very understanding person, and very systematic, very organized. Everything has to be just in its slot.

* * *

[183] * * *

Q Now, you've given your testimony a number of times in the Logan case about what you observed and what happened. I'm not going to go into that, because all of that's been decided and heard and decided and heard.

To your knowledge, has Curtis always maintained his position regarding his fault in the accident?

A He's never changed it. Never, not one word.

Q And have you ever changed what you have said in any way?

A Well, I can't, because it's the truth, what I've told you. And each time I've told it the same way.

Q Now, regarding the suit that was filed, I want to ask you about State Farm's communications. To your knowledge, in any correspondence, any oral communications with either yourself or your husband, did State Farm ever advise you that you might lose this case?

A No, it was all to the contrary.

Q Now, when you say "contrary," what do you mean?

[184] A They always said there was no chance that we would lose. And even during the trial that went on, as we had lunch with our attorney and with Trooper Dahle, they were just elated at how well it was going.

And we met with them after court one day, and they were just elated at how well it was going, and how they had you guys on the run. So we just had no reason to worry.

Q Did you hear adverse evidence at the time of trial that would implicate your husband as the fault of the accident?

A I hate to say this, but I've said it before, but I was so illiterate about the law, and that was the first time I'd ever been in a courtroom, it was the first time I'd ever heard a witness. I didn't know what was going on.

And no, I didn't take it as adverse, because I thought, "That's not true, they'll find that out what those people are saying is not true. Truth always comes out." But I was mistaken, it doesn't.

Q Now, as it relates -- But you realized it was adverse evidence that you were hearing?

A Well, yes, but I just thought, you know -- It didn't really concern me that much at that time, because I knew it was not true.

* * *

[186] * * *

Q Regarding this deed -- Now, I wanted to ask you, is Mr. Campbell a trusting person?

A Very much so.

Q If you had had any suspicion at all that there was going to be an excess verdict that would lien your property, would you ever have transferred it to both of your names?

A I probably would have done it more readily than he. He felt -- He just felt so crushed when this happened, and he realized that it was putting my property in jeopardy. He anguished over that for a long time.

* * *

[188] * * *

Q Was it your desire to go to court?

A Oh, no.

Q Was it Curtis' desire to go to court?

A No. We've learned why they call them trials.

Q Because they are trials.

A Yes.

* * *

[189] * * *

Q Now, did Mr. Bennett ever explain to you that Mr. Dahle, the expert that he'd hired to exonerate your husband, had originally voiced an opinion that your husband was at fault?

A No.

Q He never told you that?

A No. It was a positive thing. He was going to -- He was going to really help us.

Q Mr. Bennett has testified that he went to trial because, or he would not settle because Curtis insisted that the case not settle. Was that your [190] understanding?

A No. I'm sure Curtis probably said, "I am not guilty," but he would have never -- He's a prudent man, he wouldn't have -- If he felt like he was going to be in jeopardy of losing our home or that, he would have never, ever said, "You've got to try a case."

* * *

[191] Q You're unaware of that. Okay. Now, let's talk a minute about the verdict. When the verdict came in, I think we all know what that was. Tell me, if you would, what you observed in your husband as that verdict was rendered and as you left the court house.

A I think we were both so much in shock that things just really hadn't registered. We were both just kind of, "What are they saying? What is this really that they're telling us? This can't possibly be, because that's not the way it's going to turn out."

* * *

Q Do you recall Mr. Bennett talking to you about whether you should hire a separate attorney or not? Do you recall what he said?

A That was way early in the case, and when Curtis -- Curtis just asked him about it, he did most of it, and he told him he said, "Well, you can, but there's really no need for it, it would just be an added expense."

[192] * * *

Q Now, as you left the courtroom, or -- Were you with Mr. Bennett for a short period of time?

A You mean after the verdict?

Q After the verdict.

A Well, he had flown in that morning, and we picked him up at the Logan airport, and then so we had to take him back to the airport.

Q And you were driving him back to the airport?

A Yes, we were.

Q Did you have a discussion about what the verdict meant, and if so would you relate that to us?

A I don't recall of talking too much about anything. It's pretty quiet in the car, because we were in total shock. And I remember Curtis saying to him, "Well, what do we do now?"

And he said, "Go home -- Well, I guess you'd better go home and put a for sale sign on your farm."

And I commented to Curtis afterwards, I remember him saying "farm," because I said, "He thinks we've got a farm instead of just a home."

Q But you don't have a farm, do you?

[193] A No, we never have.

Q And how did that make you feel when you heard him say to put a for sale sign on your property?

A Well, I was still so much in shock I wasn't sure -- I just thought, "Well, it sounds like we've lost everything." And I just really couldn't comprehend all that was going on right at that time.

Q Over the ensuing months, Inez, could you explain to the jury how your husband reacted to the circumstances of what was happening?

A He was devastated. I think -- I think he was more devastated about the fact that it was jeopardizing my property and my security than he was about anything, because he, as he --

As we went into our marriage he had felt like he was giving me more security, like he was helping my life. And now it was going to be gone, and he felt devastated about that.

We spent many, many nights never sleeping, because we were discussing, just discussing the case, discussing what we had, discussing what we would do. But we spent many, many sleepless nights.

Q Was the fear of losing all that you had real? I mean was it something that was real to you and Curtis?

A Wouldn't it be to anybody?

[194] Q Well, I don't know. Counsel for State Farm has suggested it wasn't a significant fear to you. And I want to have you describe, if you would. Was this real?

A Oh, I should say. We had both worked very hard for what we had, and we were approaching those years where you're getting to the point in your life where you hope you don't have to work forever and ever to have money to pay the rent. And it was --

We had a big family between the combination of families. Curtis had eighteen children he was responsible for. And you don't like to see them not ever have one thing, that they're going to have to worry about mom and dad instead of mom and dad worrying about them. Oh, there was just so much involved. It was very emotional.

Q When there were discussions within a few months after, about a possible agreement that if you would pursue a bad faith claim against State Farm, Ospitals and Mr. Slusher would forego executing on your property, did that help relieve some of the pressure that you sensed and felt?

A Well, you have to understand some things, I guess. I guess I'm not very bright. Probably is what you have to understand first, and especially where legal [195] things were concerned, I had things happen to me that, just because you had a signed, somebody told you something and somebody signed it, that didn't mean a hill of beans to me, as far as I was concerned.

I had a divorce decree that said I will get the home, I would get the car, and I would get child support. I never got a penny of child support that I didn't have to go back through the law, and then the attorney took part of it. I never, I thought I had the house, and just had to finish paying for it, and Curtis had to come up with -- And these were signed documents. I ended up having to have Curtis come up with the money to pay for the house.

I was supposed to get the car, they come to repossess it one day. My former husband had, unbeknownst to me, borrowed money on it, and of course he didn't pay it back. And I didn't know it was owing, and I had to rush over to the bank and make arrangements to pay for that car so I didn't lose the car.

And then we had all these letters from Wendell saying that everything was wonderful, and it didn't turn out wonderful. So why was I to trust an agreement with a signature on it? I didn't.

Q How did you feel? We've talked about what you observed with Curtis. How did this excess verdict [196] affect you personally?

A Well, my main concern was for Curtis. He was struggling with this. He became kind of quiet, even more than he is usually. He's a quiet person as it is. But he even become kind of more withdrawn. I tried to draw him out and talk about it. Like I say, we're very private people, we didn't talk to others about it. We kept it between ourselves, and it was just extremely hard on him.

Q How about you?

A Well, I varied. Sometimes I was so mad at State Farm I could have killed them all, sometimes I thought, "Well, we'll just have to start over, that's all there is to it, and we can do it. We've done it before, we can do it again." And so I vacillated.

But it was very, very hard. It was very difficult. It was very embarrassing, it was the media had it in the paper, it was embarrassing to live in our small community and people say, "Oh, I saw that in the paper about you. That's too bad."

Or else they'd look at you and think, you know, "What kind of dumb people are you?" Or you never knew what they were thinking, but you always thought the worst.

Q Did the effects of what you and your husband [197] experienced during the period of about a year after the verdict, as far as you understand them, did they continue on, those effects, the emotional effects, and mental effects that you have been describing, did they continue on after the December of 1984 agreement?

A Well, Rich, they're still with us. They've never ceased. I mean it goes just from one phase to another, but I've spent sleepless nights this week, not slept at all because, I don't know, you get rehashing it in your mind.

Maybe other people have nerves of steel, I don't. And you say to yourself, "Turn that off, don't think about it again," but my mind doesn't turn off like that. It just keeps going, blub, blub, blub.

Q Prior to 1986, to your knowledge, did State Farm ever offer you protection from that excess verdict?

A I -- What do you mean? In what form, Rich? I'm kind of a little --

Q Did State Farm ever come to you and indicate that they would take care of that judgment, and you never needed to worry about a thing financially or anything else, until 1986?

A No, not -- I think they had -- They didn't say it like that, no. They didn't ever tell me I didn't have anything to worry about.

* * *

[200] * * *

MR. HUMPHERYS: Nothing further.

CROSS EXAMINATION BY MR. HANNI:

Q Mrs. Campbell, you were with your husband on the day of the accident, right?

A I was.

Q And you, after the accident, were never sued. You weren't named as a party defendant in the lawsuit.

A You mean personally, me?

[201] Q Yeah, personally.

A Excuse me, I'm sorry, I keep losing my voice. You can see I wouldn't make a good attorney, can't you? No, I wasn't.

Q And when the verdict was returned, of course, against your husband, Mr. Campbell, that was not a verdict against you. Right?

A Well, I felt like it was.

Q Well, I mean you weren't named as a defendant; is that true?

A I don't think so.

Q And when the judgment got entered, Mr. Campbell was the only named defendant against whom the judgment was entered against, right?

A I think so, yes.

Q Now, Mrs. Campbell, you have listened in this case to your lawyers put witness after witness up on that stand and try to prove that your husband was at fault, and that he passed six vans. You heard those witnesses, right?

A I've heard them. This is about the third go round, yeah.

Q You sat here for hour after hour after hour where that effort has gone on to prove that your husband passed six vans on the day of this accident. Is that [202] right?

A Uh-huh, I have.

Q Now, I asked Mr. Campbell the other day if he was ready to capitulate and to agree with all of those witnesses, and he said no.

I want to ask you the same question today. You've heard all that testimony, you've seen all the effort to show that your husband was the one that caused this accident. Are you, today, prepared to capitulate, give in, and agree that it was his fault?

A No. I don't know exactly what you want me to say, but no, it hasn't changed.

Q All right, Mrs. Campbell, why don't you tell us, on the day of that accident, where had you and your husband been? Well, let me ask you this. Would you like to just tell this court and jury your version of what happened?

MR. HUMPHERYS: Your Honor, may we approach the bench, in light of the court's previous ruling?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. HANNI) Mrs. Campbell, I think that you testified that when you were at trial, that was the first time that you had really heard any of the [203] witnesses say that your husband was at fault in causing the accident.

A You mean the first trial?

Q Yes. Is that what you told us?

A I could have at that, when you asked me that. But as I think about it, we did hear Slusher at the depositions, but I didn't, it didn't register that it was adverse, because I thought, "He's not telling the truth. They're going to find out he's not telling the truth, so it doesn't make any difference."

Q So you do recall that you were present at Mr. Slusher's deposition, then?

A Yes, he was sitting right in front of me.

Q And you do recall that he did testify that the accident was your husband's fault? Do you remember that?

A I remember hearing him say those things. But Mr. Hanni, I didn't know what a deposition was. I didn't know what they were doing with it, I didn't know why they were taking it.

And then, in the second place, I couldn't understand why they would let someone tell untruths and put it down, or, you know -- I just didn't understand it. I didn't know really what was going on, and I just thought, "Why are they letting him tell that stuff if [204] it's not even true?"

Q Well, just for a moment, so we can get on through this, I'm looking at page 18 of Mr. Slusher's deposition, line 8, and he is saying, he starts his answer, "Okay. Now, remember, all of our vans, you know, were together, all right. We didn't have anybody in between us. I mean all of them were together, okay? And Mr. Campbell, you know, on a six lane, I mean a one-lane road, trying to pass six vans. That's like trying to pass two Mack trucks."

A You read that the other day.

Q Do you remember that testimony?

A I remember you reading that, yes. I remember you reading it.

Q And do you recall that Mr. Slusher said that several times? Now, for example, he said, "And so Mr. Campbell, you know, took up in an oncoming traffic lane and tried to pass all six of our vans." Do you remember he said that several times?

A I've heard it here, but at that time when he said that there, I remember probably him. Exactly what he said, I don't remember. I just remember that what he said was not the truth. And I just thought, "When are they going to stop him? When are they not going to let him tell untruths."

[205] Q Now, he said that again several places in his deposition, did he not?

A Well, as you've read it, other times, yes, I --

Q And you heard when I went through all of those places with Mr. Campbell?

A Yes, I've heard it before.

Q And as you sit there today, you're telling that just wasn't the truth?

A What wasn't the truth?

Q What Slusher said.

A That's what I've told you before, and it still isn't the truth.

Q As you sit here today, you're telling this court and this jury that your husband did not pass six vans, and he didn't pass, or attempt to pass more than one vehicle; is that a fair statement?

A That's correct.

Q That was your testimony when your deposition was given, the same day that Mr. Slusher's deposition was taken, right?

A Well, whenever I've given my depositions, that's -- I can't change my story, because it's true.

Q And you told the same story at the trial of the case in Logan.

[206] A I'm sure I did, because like I say, it was true. I haven't --

Q You've told the same story all the way along, just like your husband has; isn't that true?

A Yes.

Q And as you sit here today, you're telling this court and jury that your husband did not pass those six vans; is that right?

A That's right, he didn't.

Q And you're telling this court and jury, as you sit here today, that accident was not your husband's fault. Isn't that what you're saying?

A I said that he didn't pass those vans, that I remember -- I don't know how many passed us, but I remember one in particular of the vans that passed us, because it was, at that point in time the vans were just becoming kind of, they were new. And I remember seeing the green van with this black, I think they call them boots, or I don't know what they call them, on the front of them. And it passed us.

And the girl was standing on the step, and I thought to myself, "I wonder why she's standing, why she doesn't sit." And that's the only one I noticed, because it just happened to be a brand new, shiny fancy outfit, and I just happened to glance out of my eyes as [207] it went by, and I noticed this.

But I wasn't keeping score, because as far as I was concerned there was no problem. I was out enjoying my evening.

Q Well, that van you're talking about is one that passed you folks.

MR. HUMPHERYS: Your Honor, we're violating the court's order, and I object. We just had the conference on this very thing.

THE COURT: Objection sustained. Let's move on to another area.

Q (BY MR. HANNI) Now, Mrs. Campbell, you and your husband, in 1982, went on a mission for the LDS Church?

A That's been established many times.

Q And you also, you had a physical examination before you went on that mission, by a doctor?

A I did.

* * *

[208] * * *

Q And do you recall that when your deposition was taken in March, 1990, I asked you the question whether you knew that State Farm had paid the judgment. Do you recall that question?

A I recall that question. I recall that deposition quite well, because you made me quite angry.

Q And your answer, at the time I took your deposition, was that you hadn't been told that that judgment was paid by State Farm until the day before the deposition; is that right?

A That's correct.

Q And then I asked you, "Well, how did you learn that State Farm had paid the judgment?"

And you told me at that time, "Well, Mr. Humpherys told me yesterday."

Is that what you told me?

A Yeah.

Q And that was the first time that you had ever heard that that judgment had been, or those two judgments had been paid in full.

A Correct.

* * *

[211] * * *

(The jury left the courtroom.)

THE COURT: Let the record show the jury's left the courtroom. Counsel, please be seated.

We have a number of matters to take up this afternoon before we recess for the day out of the presence of the jury. And again, I appreciate counsel's indulgence in carrying out this after hours, so that we can get the maximum amount of jury time we can.

* * *

[212] * * *

I'm interested in having someone set an agenda for what we need to cover today. I have several matters that have come up. I know counsel from both sides wanted to make records on rulings the court has made on evidentiary matters, and I want to be sure we have that. But there were some other matters, as well. So Mr. Belnap, why don't you speak to it first.

* * *

[214] * * *

THE COURT: Mr. Belnap, did you have an agenda you wanted to state for the record?

MR. BELNAP: Please, Your Honor. I wanted to make a record of a bench conference during the examination of Mr. Crowe.

THE COURT: Okay.

[215] MR. BELNAP: I wanted to bring up the subject of some time slips that have my time entries on them in March of 1982. There are two time slips that were discussed with the court, I think on one of the first trial days. I have a very brief motion on those.

I have a motion to discuss a preclusion of talking about other cases, and I think there's already been a ruling on that partially, but I want to specify that as to punitive verdicts in other cases.

And then I had one to address with the court, a portion of the 1986 DCS conference that was made up of some tapes, I think there were nine or ten tapes, and that was part of the court order that Mr. Humpherys advise us what parts he was going to use. And it's not clear to me if the part I'm concerned about is going to be used, and maybe I could just informally ask them on the record right now.

THE COURT: Sure. All right.

* * *

[216] * * *

THE COURT: Okay. I wanted to bring up the issue that came up today on the income tax returns, as well. I think that might be something -- Let me just make a reference to it, so nothing more wishes to be said about it, then that would be acceptable to the court.

But my understanding of the rule that I'm dealing with is Rule 608-B of where normally specific instances of the conduct of witnesses are not appropriately subjects of impeachment unless they fall under category 1 or 2, 1 being concerning the witness' character for truthfulness or untruthfulness.

Now, I assume that was the basis upon which Mr. Schultz was raising the issue about the income tax returns of Mr. Davis.

My understanding of this rule is that that's something that has such a potential for being prejudicial that it ought to be raised with the court ahead of time. And it seems to me to be something that, if you're going to throw something like that at a witness, you ought to alert the court and counsel, and we go on record when the jury is not here, and decide if it's appropriate. Because it seems to me to have 403 [217] implications, as well as others.

You've certainly stated a basis to indicate you had a reasonable basis for, and that's the second concern, but I don't think that was the issue, here. I think you had the reasonable basis for asking the question, to me it was just whether it was an appropriate question to ask. And what I'm suggesting is that, in the future I think that that kind of a thing should alert the court and counsel too, so we can decide it ahead of time before you just throw it at the witness before the jury.

All right. Does the plaintiff wish to raise anything in addition to what has been stated by Mr. Belnap?

MR. CHRISTENSEN: I would like to simply follow up on what the court has just said. Yesterday we had Mr. Crowe, who we put on to lay the foundation for documents. We got a lot of objections, and in the course of my trying to meet the objections to lay foundation, we offered some very limited testimony about policies and practices.

We then had a cross examination that went way beyond the scope. Counsel indicated that it would save time, and I will admit my memory of exactly what was said is not clear, but my impression was counsel has [218] indicated, "It'll save time if I can do this broader cross now, so we won't have to call this witness as part of our case."

As I had an opportunity to reflect on that over the evening, it was a situation where they were allowed to essentially make Mr. Crowe their witness, lead him. They used deposition testimony, or excerpts from it, from depositions we hadn't been alerted to, we don't have, we hadn't seen, we don't know if the quotes were in context or not.

With the jury sitting there, it's difficult, at that late stage, for us to respond. And today we had documents used from Mr. Davis' personnel file. In fairness, I think we ought to get some fair warning on those kinds of materials so that we will be in a position to offer any objection or response that may be appropriate. So I would like to raise that.

I also think that, in connection with Mr. Crowe, and their examination of him, that the statements that were put on the screen from other depositions obviously, in large portion, related to his experience at the fire company. At least one of the depositions that were read was from a case where the fire company was a defendant.

And I simply want to make a record that that [219] door's been opened by their exam. We don't plan to run out and get a lot more evidence and witnesses on the subject. But I would hope it would avoid a lot of problems now, in laying foundation as we need to, on fire company matters, because they, one, made Crowe their own witness on these subjects, and number two, they took him right through his experience with the fire company, basically used his depositions from other cases to compel testimonials out of him on how great the fire company was, and how fair their claims practices were, and in all these years they hadn't seen bad practices.

And while we're here making a record, I'd like to make that record, that I think that certainly, now, sets the table for Ina DeLong to, within the compliance with the other rulings of the court, ought to be able to testify without our having to waste a whole lot of time on that issue. Because I think that door's clearly been opened.

THE COURT: Well, let me -- Before Mr. Belnap responds, I don't want to be here on a marathon afternoon, so I think I can shorten some of it.

I'm not comfortable changing my ruling on automobile versus fire. I think that that's a line that I've drawn, and I think it's a reasonable line, in trying to find some way to give some kind of a framework [220] to where we are. So I'm not going to accept a suggestion that the examination of Crowe has now opened the door to a broader set of examination of what has already been said.

As far as the scope of the Crowe deposition goes, the hardest, one of the hardest calls that I have to make is deciding what is within and what is without the scope of examination. And I'll have to say that my view on recross examination, an extremely tough line. You've basically got to justify that what you want to ask in recross examination is something that came in in redirect, and either an objection was overruled, or it was clearly outside of it.

But when it comes to cross examination, I have a little more liberal view of that. And Mr. Belnap made the argument to me, and I thought this was at the heart of his argument, it wasn't that it would save time on his direct case. I thought he was saying, for me to respond to the implications of the documents that were ruled on by, as admissible in the case, that he needed to go into this other stuff as a way of developing that. And I think that was basically your case, wasn't it?

MR. BELNAP: It was.

THE COURT: And I felt comfortable with that, but to a point. And it certainly did open a door wider, [221] but I also felt that what you were going to get from Crowe was well known, and I refer to Mr. Christensen, he's been deposed repeatedly, and I was advised by the trial plan that the examination of Crowe was going to take the defendants approximately thirty minutes.

And when that expanded to seventy-seven minutes, it created considerable amount of concern, which, even though I allowed the examination, I still recognize that it certainly was outside of the narrow scope of what you had asked.

And there's a point where my general view of being somewhat liberal comes in conflict with my sense I've got to, one, recognize that we're way out of what would be the normal scope of cross examination, and we're also in areas

which seem to me to be a problem. And so I drew a line at some point, where I just felt like we've gone on way past the budget, we're far afield, and so the line was drawn.

But it's a difficult line. I don't find that to be an easy thing to do, but that's my job and I will continue to do that as best I can, and recognize that there's going to be disagreement on both sides as to, you know, where I properly draw the line, and where I don't.

The other issue you raise is one which I find [222] more concerning, and that is, if there's information that has been sought through the discovery process, that is known to State Farm, or to plaintiff, for that matter, that has not been disclosed and sort of kept in a little secret file, so that when the time comes that there's an opportunity to basically ambush a witness, I have some problems with that.

It seems to me that part of what civil discovery means is that you tell the other side what you've got, particularly when they've asked for it. And that's the bigger concern to me on the issue of Crowe, or on the issue of Davis, or anybody else.

I've been made aware from plaintiffs' representations to the court, that State Farm has, keeps files on these different witnesses, because they confront them from time to time, and those files become a basis for them to examine witnesses. And there's nothing wrong with that. I mean I find no fault with that. In fact, I would anticipate it.

The difficulty that I have is, if you've, that information's been asked for --

MR. BELNAP: It hasn't, Judge. May I --

THE COURT: I guess that's the question. You're saying that --

MR. BELNAP: I'm saying to you, Your Honor, [223] that that was never asked for in this case. Mr. Crowe was hired as an expert witness by the plaintiff, and was deposed as an expert witness. And he is very aware of the cases that he's given testimony in, they've been asked about on other occasions. It's not an ambush until you get up on cross, Your Honor, you don't know what you're going to need in terms of impeachment evidence. So that is not the case.

THE COURT: All right, well, maybe -- I'm looking for a ruling that's a general ruling, rather than something that's just dealing with a specific situation. It seems to me if something has been asked for, then you shouldn't use it if you haven't produced it. I mean that stands like just kind of a garden variety ruling on a case like this.

If it hasn't been asked for, and you've got it, then I suppose you're entitled to use it. And that's, to me, to be the way the line would be drawn.

MR. HUMPHERYS: The problem we have is, that State Farm brought two or three motions in limine. They wanted us to specify every page of every deposition we intended to use, they wanted us to specify every page of every exhibit we were going to use, and so forth, and made a very hard pitch about how hard it was for them to prepare and properly respond without knowing it.

[224] We said, "That's fine, we have no problem," and we voluntarily, without response from defendant, given them page numbers of exhibits, and actual cites and quotes to depositions that we intend to use, and they have not responded at all in kind.

THE COURT: Well, let me ask -- All I'm talking about right now is simply the use of prior recorded testimony for purposes of impeachment. I mean anything for substantive evidence to me is a different matter, and obviously if you've asked for it and they haven't produced it, and they seek to

get it into evidence, you just have to make that objection, and the court would exclude it. The rulings are clear on that, and that's where I would go with it.

But if it's something for purposes of impeachment, I see that as being a distinguishable category. And if there's something they've got from one of these witnesses that, where they testified before, then I'm not of the view that they necessarily have to just turn over everything that they have that might possibly be impeachment material, just because it's something that one of your witnesses has testified to at a prior occasion. I think that's where I draw the line, unless it's a clear subject of prior discovery request.

MR. HUMPHERYS: That's fine. I just know the [225] court said that it goes both ways, and we've received nothing from them in like kind or quality. I'm just saying that.

THE COURT: Well, then, so you've opened the door to get whatever in that you have disclosed to them, but they have, they're going to be precluded if something should come up that they want to get in that would be within that category. The way it goes both ways, is the rule applies to both hands. And if you have made an election to do something they haven't done, well then clearly that may well operate against them if they choose to try to put something in they haven't disclosed.

MR. BELNAP: Is the only thing I want to say about that is, Rich did, Mr. Humpherys did give us some excerpts of the State Farm depositions that he intended to use, and I'm not going to sit and quibble about getting those late. We got those, I think the day or so before the trial started. And I've been authenticating over 4,000 pages of documents, and we've been busting our backs to get, you know, things produced to them, minutes and authentication and all this other stuff. We're going to get to that. I, frankly, haven't even had a chance to even look at the pages that he's designated yet.

[226] THE COURT: All right.

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[241] * * *

THE COURT: Okay, let's -- Preclusion of talking the other case -- I guess it's testimony of Mr. Fye on punitive damages.

[242] MR. BELNAP: As I understand the court's prior ruling, Your Honor, evidence from other cases you have restricted to rebuttal. And the purpose of this motion is to specifically say that if there is an effort of any witness to get up and say, "I am aware," like Mr. Fye on direct examination in the case in chief, to get up and say, "State Farm's been hit with a verdict in another case for X-number of dollars," or, "They've been hit over here for X-number of dollars," what we're doing, Your Honor, is exactly what we previously argued about before, and that is we're going to create a series of mini-trials, even if it's admissible under some basis, which I can't imagine it would be.

You end up creating a series of mini-trials over what that case was about, who was involved in it, what were the issues. And it's simply our position, Your Honor, that it's, number one, irrelevant, it's not relevant evidence under Rule 402, it's not relevant evidence under Rule 404, it is certainly more prejudicial than probative under 403 in terms of diverting the jury's attention.

And there's an ALR annotation on this that indicates that it's not appropriate, that the jury needs to decide from the facts of this case if punitive damages are appropriate. They're not required under the [243] instruction to give them, to award them. But they need to decide from the facts of this case if they are appropriate.

The Braithwaite case, recently decided by the appellate courts of this state, and the BMW case would indicate that

there's not similarity, it doesn't arise out of the same facts, and that's another reason that it should not be admitted.

Interestingly enough, there have been some decisions which have indicated that it is appropriate for the defendant, if they choose to raise it, to offer that evidence that, "We've already been punished in other cases, and so ladies and gentlemen of the jury, you don't need to punish us in this case."

THE COURT: You're not planning on making that argument?

MR. BELNAP: Pardon?

THE COURT: You're not planning on making that argument?

MR. CHRISTENSEN: They don't have a witness that knows about any of these other cases.

MR. BELNAP: And so that would be our position on this point, Your Honor.

THE COURT: Thank you.

MR. CHRISTENSEN: Your Honor, it's [244] interesting, first of all, how State Farm targets some of the most crucial evidence for repeated motions in limine. We went through this some time ago.

The court's ruling, the order signed May 28th, paragraph 1 says, "Plaintiffs will be limited in presenting evidence in their case in chief of other lawsuits. The lawsuits involved in automobile claims, either first or third parties. These can include lawsuits relating to automobile claims either handled by State Farm Auto, or lawsuits relating to automobile claims where State Farm wrote the auto policy." Or excuse me, "State Farm Fire wrote the auto policy. The court will also allow evidence of cases where plaintiffs have shown adequate language."

It then, paragraph 2 then says, "The foregoing restriction does not apply to rebuttal and impeachment evidence. The court finds that because State Farm contends that it does not

keep records of bad faith verdicts, punitive damage verdicts, excess verdicts against its insureds and other similar information, that plaintiffs have been limited in their efforts to obtain such information."

Then it goes on to point out how we have found approximately seventy-five cases through the Westlaw data bank, and thirty appellate decisions, and [245] we've indicated we've also had evidence of class actions and RICO actions.

We then represented to the court, and this is paragraph 3 of the court's order, that, "Unless the listed cases," that's these seventy-five plus thirty, "had been the subject of deposition testimony, we didn't plan to discuss them in the case in chief, but intended to use them for impeachment or rebuttal."

And so, as we understand the court's order, to the extent that cases were discussed in depositions, and fit paragraph 1 of being auto cases, that we're not precluded from mentioning them in the case in chief. So responding to the first point of Mr. Belnap's argument, the order of the court was not that we were limited to rebuttal on all cases, but it's as I indicated.

Secondly, I can't think of evidence more relevant in a punitive damage case than what I'm about to read. As the court will recall, we sent a first 30-B-6 notice in this case, I think back in '94. State Farm designated Manuel Mendoza in the home office as the responsive witness on all points, and that's reflected right up front in the deposition.

As part of his deposition, and I'm now beginning to read on page 271, line 22, he was asked, as the spokesman of State Farm, "When you have, in those [246] cases where you've seen punitive damages paid, was there any communication with the president's office to describe why punitive damages were assessed?"

And the answer was, "No."

"Did the president's office address any of the problems on which the punitive damages were based?"

Answer. "In any that I've been involved in," and he's speaking on behalf of State Farm, "no, I'm not aware of that."

Question. "In any case where you have paid out punitive damages, are you aware of any changes in State Farm's policies or procedures as a result?"

Answer. "I can't recall any. They're usually so unique to a particular case that they don't apply broadly."

The next question. "How about the case in Texas that resulted in a $100 million punitive damage award? That was under your direction, wasn't it? I shouldn't say that. The BI consultants that you work with have the Texas region."

Answer. "Yes, they do."

"And that case fell under that region, did it not?"

Answer. "Yes, it did."

Then the question was asked, "Were you aware [247] that there was an allegation of coercion and conduct -- " And I'm going to skip some of this down to, okay, page 276, line 12. And I hope that the copy I have lines up with the depo. If it's not, it's the same substance. The question was --

MR. BELNAP: I'm not sure what that means.

MR. CHRISTENSEN: Well, I have a printout somebody did in my office, and I'm not sure the lines in this printout are exactly the same as the depo lines, but it's the same pages.

MR. BELNAP: I see.

MR. CHRISTENSEN: "Do you know whether there has been any discussion or intention expressed to modify or change State Farm's claim handling as a result of any case which awarded punitive damages?"

Mr. Mendoza then says, "Broad, across-the-country change? Is that what you're talking about?"

The question is, "Let's start with that."

Answer. "No, I'm not aware of that."

Question. "How about regionally?"

Answer. "No, I'm not aware of that."

Question. "How about divisionally?"

Answer. "I don't know of that."

Question. "So the answer would be you know of none?"

[248] And the answer is, "No, that's right."

The next question was asked, "Regarding bad faith claims, is there any report beyond the general claims office to either the president's office, the board of directors, or any of the other executive offices, any report that pertains to how many, how much has been paid, circumstances, anything like that, to your knowledge?"

Answer. "No, not to my knowledge."

This is a 30-B-6 witness testifying under oath, that even in the face of a $100 million punitive damage verdict in a bad faith case, State Farm has made no change. And, in fact, the executive office and the board of directors of the company is so disinterested, they don't even want to know about this. They don't even look into why there are punitive damage awards.

In a case of this kind, I can't imagine evidence that's more relevant. There are, for example, in the Crookston case, and I'm now looking at Crookston 1 from our Utah Supreme Court, they list seven factors, not that can be considered, but that must be considered, they use the word "must." This is page 8086, Crookston 1.

"The stated list of factors must be considered in assessing the amount of punitive damages [249] to be awarded include the following seven. One is the relative wealth of the defendant, two, the nature of the alleged misconduct, three, the facts and circumstances surrounding such conduct, four, the effect thereof on the lives of plaintiff and others, five, the probability of future recurrence of the conduct," and let me talk about that one.

Here we have a 30-B-6 witness, Mr. Mendoza, in the home office --

THE COURT: I understand the relationship.

MR. CHRISTENSEN: Okay, I will -- And so under Crookston, this evidence is squarely on point.

Another reason, for example, that case becomes critical -- and that's out of Mendoza's depo, not Mr. Fye's -- we have testimony, over and over again from State Farm witnesses --

THE COURT: Let me ask you, Mr. Christensen. Are you basically talking about the Texas case? In other words, you've got Mendoza testifying, and it seems to have some reference to that Texas case. Are there other cases, or is that the one that you really have in mind, and why you're resisting this motion by Mr. Belnap?

MR. CHRISTENSEN: That's the most important one. There is the Singh case, which is very important. [250] Many of the documents that Mr. Fye has that we have come from that case. There are a number of aspects that went on in that case that are relevant, they've been covered in depositions, as our people have been deposed. That's another case that we think should not be precluded.

"Are there others, Mr. Fye?"

"The Reva case, and the Ortiz case."

"Do you know more complete names than those, Mr. Fye?"

"Both Reva and Ortiz versus State Farm Auto, I think it's Edwin Ortiz and Alfred Reva."

"And those were discussed in your depositions?"

"I believe so, but I can't give you the line and verse."

Okay. Those, I think, are the ones that we --

MR. BELNAP: Those were not discussed in his depositions.

MR. CHRISTENSEN: Those were not?

MR. BELNAP: No.

THE COURT: Well, I'm going to allow it as to the cases that were discussed in his deposition that related to auto, and if there's Singh and the Texas case, so be it. And if there are others -- But I think [251] that's a reasonable ruling, given the argument from Crookston and others, so I'll state the ruling on that basis.

MR. BELNAP: Your Honor, let me just state for the record, so that you understand and it's clear. On the Texas case, that was a first-party case, resulted in the verdict that was represented, as I understand it, the case has been settled for pennies of the verdict. But so be it.

Now, on the Singh case, I cannot represent, as I stand here, if that was or was not discussed in the Fye deposition. It may have been. But that did not result in a final judgment, did not result in a reported decision. There was no decision. There was no final judgment, it was a settlement.

THE COURT: You say the case was settled before --

MR. BELNAP: No verdict.

MR. CHRISTENSEN: But Your Honor, the case was settled in the middle of trial. State Farm, we understand, has recently filed documents with the court indicating they paid $30 million to settle that case.

That is clear evidence that, in spite of that level of money being paid out in punitive damages, that the conduct continues. It doesn't, it does not end, and [252] that falls squarely on, I think it was point 5 of the Crookston seven points, and that is the likelihood that the con will continue.

THE COURT: All right, well, I've ruled as I have stated, and that's the -- We're going to talk about the tapes from the 1986 DCS conference.

MR. BELNAP: Yes. One of those tapes is a presentation that was given by Guy Kornblum. This is not the tape that you ruled on in March, Your Honor. That, I think, was entitled "Bad Faith Litigation." This is another separate tape.

THE COURT: Same speaker?
MR. BELNAP: Same speaker.
THE COURT: Did you review the one that I reviewed?
MR. BELNAP: What's that?
THE COURT: Did you review the one I reviewed?
MR. BELNAP: The Kertoch?
THE COURT: The one with Alfred E. Newman at the end.
MR. BELNAP: The Kornblum tape, he is clearly a lawyer, he is clearly, at the time in 1986, was in an attorney-client relationship meeting with the upper management, 147 divisional claims superintendents, who [253] are the highest management level of the company in terms of claims in each particular state.

And he indicates, and I'd like to quote this to you, Your Honor, he's an outside attorney, he's not a State Farm employee. He indicates that, quote, on page 4 of this transcript that Mr. Humpherys and Mr. Christensen have as one of their proposed exhibits, quote, "It's," referring to his presentation, "It's been prepared strictly for this group. It contains our attorney work product, and to that extent we have a proprietary interest in its content. And as we have all -- " Excuse me, "And we have also asserted, as Dick has mentioned, the attorney-client privilege.

"So we feel that there is every reason not to disclose any of the things that will be discussed here, or my comments, remarks, or opinions to anyone outside of State Farm. And in addition, the opinions and statements that I'm going to make this afternoon, and those of Dr. Peterson and Cliff Scherich, are also the opinions of our firm, and our own opinions, and not necessarily those of State Farm. So those caveats should be kept in mind.

"And the fact that we are talking about privileged information and attorney work product should be kept in mind this afternoon during the entire [254] program.

THE COURT: So is that a video or an audio portion of the tape, putting everyone on notice that they claim privilege for it?

MR. BELNAP: Yes, and he was introduced, and he refers to Dick, and he says, "We have also asserted, as Dick mentioned." This is Mr. Garman that introduced him, indicating that he's an attorney, that this is an attorney presentation to this management group.

THE COURT: What was it, Mr. Christensen, that you want to put before the jury that would come out of this tape?

MR. CHRISTENSEN: Could I explain first why we don't see any way it's privileged, and then I'll explain that?

THE COURT: Yes.

MR. CHRISTENSEN: We didn't get these tapes from State Farm. Mr. Fye has them. The transcript counsel is reading from was prepared in Mr. Fye's office. They were made public by a court in Arizona. And so, number one, they're part of the public domain. There, as I understand it, they're being used in other cases.

Number two, and I didn't know this was going to be raised today or I'd have brought my copy and been [255] a little better prepared.

THE COURT: Well, if you want to raise it at another time I'm not going to hold anybody to a conference today that they're not ready for.

MR. CHRISTENSEN: I think it's straightforward enough that we can get this taken care of.

Secondly, in another, towards the end of the conference, Mr. Macherle, I think it is, speaks, he says, "Tapes of this conference have been made, they're going to be available to you, we're going to be sending them to you to use for training your people."

Third, this was a large conference. Counsel said 144, I've heard 177 divisional claims people there, plus other

people. It's clear from the tapes, and I've reviewed most of them. There were people there that didn't even work for State Farm. This was not legal advice on a specific case.

THE COURT: Well, if your representation is true, Mr. Christensen, there are people there that didn't work with State Farm that ends the privilege right there. You don't have to go any further. Can you support that?

MR. CHRISTENSEN: Yeah, there's a Dr. Martin Peterson there who's --

[256] MR. BELNAP: These are all with -- That's who he refers to on his presentation group. It's kind of like having a paralegal or a consultant with you in a case, Your Honor.

THE COURT: All right.

MR. BELNAP: It was part of the presentation.

THE COURT: Okay, I understand. That wouldn't constitute a waiver, then, in my mind.

MR. CHRISTENSEN: Another thing is, we referred to it in opening statement. They've known for months we've had it. Mr. Fye's already put on --

THE COURT: What's the substantive testimony that comes from the tape?

MR. CHRISTENSEN: Substantive testimony is several things. One, for example, is Mr. Kornblum points out -- And by the way, it's from the substance it's clear he's making similar presentations to other insurance companies, and he's a guy that goes around and does these things.

But he points out that punitive damages cannot be factored into the rate base for a company. We don't know how in the world State Farm does that without keeping any record of punitive damages, as they represent. He makes the statement that truth is illusory in bad faith cases, that what matters is what [257] you can get a jury to perceive.

He makes these statements, and Mr. Mendoza introduces Mr. Kornblum by saying, "We do not want to," and the phrase

he uses, "We don't want to have to put money on files in bad faith cases, because of company witnesses who screw up." That's my word, not his. But that's the message.

They are then, it's pointed out to these divisional claims superintendents what is expected of them and their people in preparation to testify in these cases. He also gets into -- and again, I'm at a disadvantage without this in front of me -- oh, he gets into what was presented by Mr. Fye, and that is, "There are two cardinal rules in preparing a claim file."

And this is corroboration that what's found in the Excess Liability Handbook was being retaught in 1986, to all of State Farm management, and this is State Farm Auto.

"Cardinal rule number one," and it's interesting, he doesn't say, "The way to avoid bad faith is to treat people fairly." He says, "Cardinal rule number one is everything in the file is on an eight and a half by eleven sheet of paper. Cardinal rule number two is everything that's written in that claim file in an excess case is written 'To John Doe and Ladies and [258] Gentlemen of the Jury.'" It's another way of stating the self-serving instruction from the Excess Liability Handbook.

That is in there. There are a number of other things that, frankly, I can't remember without having that in front of me.

THE COURT: Let me go to, I think your claim that it's in the public domain. What was the basis the Arizona judge disclosed it?

MR. CHRISTENSEN: I think the history, as I understand it, is State Farm had represented that they had no tapes from the divisional claims superintendent's conferences. In a deposition in that case, apparently some State Farm employee let it slip that these existed.

When that occurred, the judge in Arizona simply required them produced without protective order. I presume, without knowing that the decision was made as part of that ruling

that it was part of instructional materials at State Farm, which it clearly is, the statements by Macherle, "Go back and use these to train your people," doesn't suggest attorney-client privilege. And it was then made available without protective order, and I understand has been used in cases since, including the Arizona case.

THE COURT: Okay.

[259] MR. BELNAP: Your Honor, the privilege belongs to the client. And because a court in Arizona may have ordered the tapes to be produced, does not mean that State Farm has waived the privilege. The privilege belongs to it. And ordering these, as you did, to be produced in this case, for discovery is one thing. Requiring us to waive the privilege for purposes of it, and for purposes of their evidentiary admission, is a second thing.

Now, to wait, Your Honor, it's stated in this presentation that we want the witnesses to get the correct answers, to be honest and to be truthful. And the context of this statement is then said, he's talking about the trial arena being an adversary proceeding.

And on page 68 of their transcript it says, "Lawyer versus lawyer, the two attorneys arguing their respective positions, and if equally competent, justice will result. In principle it's a good system. In actuality, truth is illusory. Truth is a perception. What the jury perceives in that courtroom is what the jury is going to believe is the truth. Whether, in fact, it actually is or not is another question."

He's just talking about the adversary system and what is perceived. But in putting that in front of the jury, it just seems that it's prejudicial, and it's [260] attorney-client privilege. I mean it's within a controlled group. Yes, this is a big company, they have 80,000 employees. But it has the 150 to 177 of the top claims people there that are talking to a lawyer, where it's clearly stated that it's privileged.

THE COURT: What about the statement that, "These are training materials, there will be tapes made available to show your people in training exercises"?

MR. BELNAP: I cannot respond to that, whether or not this tape was made available. It's not part of the video lending library.

THE COURT: But is that statement made in the tape? I mean, do you dispute what Mr. Christensen has stated about what's in the tape?

MR. BELNAP: What I'd like to do, Your Honor, is to go to the Macherle portion, because I think -- Okay, here I am.

MR. CHRISTENSEN: Can I look at that, Paul?

MR. BELNAP: Certainly.

MR. CHRISTENSEN: When we sent that down, we went through -- It's in there, I've watched it on the tape. Whether this transcript --

THE COURT: I'm clear on where I'm going with this. I want to reserve ruling on it. When are you going to need that, Mr. Christensen?

[261] MR. CHRISTENSEN: Tomorrow, I believe. There's a couple of other things that I've been reminded of that are in that, that I think are very important.

MR. BELNAP: Counsel, have you got -- I know that Mr. Humpherys gave me some additional pages.

MR. CHRISTENSEN: I think it's in those.

MR. BELNAP: And I'm sorry, but I, in the midst of packing up things, I don't know what I did with them. Is that the additional pages to this Macherle section?

MR. CHRISTENSEN: It's to Macherle. I don't have it today, because I didn't know it was an issue.

The other concern I've got, Your Honor, is it's --

MR. BELNAP: It's not in the pages I've got. There's not a reference to it in the Macherle pages I've got.

MR. CHRISTENSEN: When we sent that down to you sometime ago, that part had not yet been typed, and we sent you the other later.

We've already used part of this without objection. But there are some other things I'm reminded that are in it that are very important to us. One is, Mr. Kornblum talks about, in bad faith cases tying the plaintiffs up for months with motions. And he refers to [262] them as mad dog defense tactics. Directly on point for our theories in the case.

MR. BELNAP: Well, that's been a ruling of this court already in this case.

MR. CHRISTENSEN: Well, about this case, but not about State Farm's practices in general. Another is the instruction in there that they should not produce files, other State Farm claims files. That they should avoid that. And he says they always find things in them that hurt.

It explains a lot about the position State Farm has taken in this case. They want to talk about excess verdicts, there's only seven of them, they won't let us see the files. The jury's already heard part of that. Those are two other things that are highly relevant. And as I say, we didn't think this was an issue, because we already used part of Kornblum without objection.

MR. BELNAP: I did object during Fye's testimony.

MR. CHRISTENSEN: Well, it's already in and used.

MR. BELNAP: That doesn't mean that we've waived what we're raising here, Your Honor, and I'd like an opportunity to get those additional pages. And I [263] apologize that I've misplaced what Rich gave me.

MR. CHRISTENSEN: Well, we certainly can make you other -- If I'd known, I would have brought all this with me today.

THE COURT: When tomorrow are you planning on putting on this evidence?

MR. HUMPHERYS: We will start with Mr. Fye in the morning, and I can't give you a specific time, but it'll be sometime. I guess we could take a break when we get to that point. Certainly I wouldn't go into it without a ruling by the court.

THE COURT: Let's just, whatever you can get me on either side between now and tomorrow morning, I'm sure you've got other things to worry about. But it seems to me that both sides admit to having a lack of all the information before them. Just give me -- And I think I know what your best shots are, but give me what you've got tomorrow morning, and I'll reserve until I see whatever else you want to supply me, and make that ruling as best I can tomorrow, on whether to allow it or not.

MR. BELNAP: Your Honor, there's one final thing that I think I can be very quick about. And that is, Mr. Fye intends, as I understand it, from some information in one of the exhibits, intends to talk [264] about the financial position of State Farm. And I would just simply ask the court to restrict that testimony until there's been a finding of willful, reckless misconduct, as a step procedure before financial wealth and financial position of my client is introduced.

MR. CHRISTENSEN: Your Honor, it's part of our case in chief. It shows the motivation. For example, as was raised with the cross examination of Mr. Fye a few days ago, why would State Farm do this with Campbell? Their limit was fifty, they've now paid over 300. Why do this?

And that financial information is necessary, among many other issues, to show how profitable it is. And we don't want -- Mr. Fye's been here twice, at considerable expense. We don't want to have to bring him back again. This case has not been bifurcated. I think we're trying all the punitive damage issues. And he's prepared to talk about it, and we need to present it.

THE COURT: I'll allow you to go into it with him. All right, we'll be in recess until tomorrow morning at 8:00.

(Evening recess.)

* * * *

EXCERPTS OF TRIAL TESTIMONY OF ELLIS L. CHRISTENSEN, JULY 9, 1996

[Vol. 20, R. 10275, commencing at p. 111]

* * *

ELLIS L. CHRISTENSEN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHULTZ:

Q Would you please state your name and your address for the record.

A Ellis L. Christensen, 430 South Main, Smithfield, Utah, 84335.

Q How old are you, Mr. Christensen?

A Sixty-three.

Q Are you presently employed?

A No.

Q Have you been retired?

A Yes.

Q When did you retire from employment?

A November 1st, 1964.

Q You retired in 1964?

A Or 1994, excuse me.

Q Okay. You're a young-looking man if you retired then. Prior to your retirement, [112] Mr. Christensen, who were you employed by?

A State Farm Insurance Companies.

Q And did you work for State Farm Mutual Automobile Company?

A Yes, sir.

Q Can you tell the jury the date that you began working for State Farm, and how long you worked for State Farm?

A I began October 15th, 1964, and I worked for State Farm for thirty years.

Q Where were you employed when you worked for State Farm?

A I began my employment in the Ogden, Utah, claims office, and then in January of 1968, I was moved to the Logan, Utah claims office.

Q And did you remain in the Logan office until you retired, then?

A Yes, sir.

* * *

[113] * * *

Q Okay. Now, while you were employed by State Farm, Mr. Christensen, can you explain the kinds of work that you did.

A I was primarily a property damage claims adjuster.

Q Can you explain what that involved?

A That involved inspecting damaged vehicles, damaged buildings, damaged fences, writing estimates on vehicles, and the damaged fences and so forth.

* * *

Q During the years that you worked for State [114] Farm, did you have occasion to handle any kinds of claims other than the property damage?

A Yes, sir, I handled what was termed minor BI claims, bodily injury claims.

Q And during what time frame did you handle those?

A From the time I began my employment with them until I retired.

Q Can you explain what a minor bodily injury claim was?

A This was one where there were no injuries reported in the accident, but when I contacted the people, they had either been to the hospital or they had been to the doctor, and had incurred some minor medical bills.

Q And you had authority to pay those bills as part of your work, then?

A Yes, sir.

* * *

[115] * * *

Q With respect to your handling of property damage claims, Mr. Christensen, did that include both claims made by third parties against State Farm insureds, and also first-party claims by State Farm insureds themselves?

A Yes, sir, it did.

* * *

Q During the time that you worked for State Farm, Mr. Christensen, did you have occasion to receive any kind of reports that gave you status on numbers of claims pending and things like that?

* * *

[116] * * *

Q (BY MR. SCHULTZ) Okay, Mr. Christensen, let me go back to that question. Did you get any kind of reports that gave you some kind of data on pending files and so forth?

A I received copies of what was termed thirteen-week report.

Q Okay. And what was included in those reports?

A It would indicate the number of new claims received, the number of claims that had been closed, and the number of claims that were still pending as open claims.

Q Did it include any kind of information about average loss paid --

A No, sir.

Q -- information? Did you ever have any goals imposed upon you with respect to reducing average paid amounts on claims?

A No, sir.

* * *

[121] * * *

Q I have a few more questions for you, Mr. Christensen. Do you recall whether Mr. Summers ever complained to you, or suggested to you that he was being required, or he was being compelled to do things on claim files that he thought was inappropriate, or that was treating people unfairly?

A No, sir.

Q Did he ever tell you that he thought claimants were not getting a fair shake on --

A No, sir, he did not.

Q Did Mr. Summers ever tell you that he was falsifying documents, Mr. Christensen?

A No, sir.

Q Did he ever tell you that he was being required to say dishonest things to people he dealt with in the business?

A No, sir.

Q Did he ever tell you that he was being required to change reports?

[122] A No, sir.

Q Now, Mr. Christensen, you worked for State Farm, you've said, for about thirty years; is that right?

A Yes, sir.

Q And during that time frame, did you have the opportunity to handle quite a few claims?

A Yes, sir.

Q Did you have to deal with both policy holders and claimants?

A Yes, sir.

Q Were you trained by State Farm, Mr. Christensen, to cheat policy holders?

A No, sir.

Q Did you cheat them?

A No, sir.

Q When you were handling property damage losses, Mr. Christensen, were you taught to value those claims at a lower amount if the person who was making the claim was uneducated?

* * *

[123] * * *

Q (BY MR. SCHULTZ) Let me just ask you this question, Mr. Christensen. In your handling of claims, can you tell the jury whether you were trained to pay more or less, based on considerations other than what the value of the loss was?

A No, sir.

Q Whether the person was educated or uneducated, did that make a difference?

A No, sir.

Q Whether the person was of a lower social economic status, were you taught to pay less?

A No, sir.

Q And did you pay less for those reasons?

A No, sir.

Q Did you pay less if a person making the claim was a woman?

A No, sir.

Q There's been some testimony in this case, [124] Mr. Christensen, from another witness, that State Farm taught its claim handlers to prey upon the weakest of the herd in handling claims. What's your experience been in that regard?

A To pay what was owed to the claimant or the insured, no matter who they were.

Q Mr. Christensen, Mr. Summers has testified in this court regarding various practices which he has said he was either taught or required to do in the handling of claims while he worked up in Logan. And I just want to ask you about some of these, and ask you if you were required to do these

things, or if you did these things as a claims handler while you worked for State Farm. All right?

A Yes, sir.

Q Falsifying or withholding documents, photographs, or other evidence from claim files, and concealing facts?

A No, sir.

Q Withholding information from insureds and claimants regarding benefits to which they were contractually and legally entitled, ignoring inquiries and benefit requests?

A No, sir.

Q Downplaying or ignoring liability or [125] negligence of the State Farm insureds to artificially create more advantageous settlement positions?

A No, sir.

Q Handling cases of clear liability only under no fault to have the effect of limiting the insureds' and claimants' recovery to out-of-pocket expenses, and preventing payment of full and fair value of claims?

A No, sir.

Q Downplaying injuries, or concealing the nature and extent of injuries to cast doubt on settlement value, especially where the claimant or insured is at a disadvantage, such as experiencing financial difficulties, or has trouble communicating?

A No, sir.

Q Imputing comparative negligence or assumption of risk to a claimant, even where the facts did not indicate such?

A No, sir.

Q Exaggerating comparative negligence beyond what it was fairly evaluated at?

A No, sir.

Q Obtaining first contact or early settlements and releases while claimants were still under a physician's care, with a verbal representation that if further complications

developed the case would be [126] reopened, then later standing on the release and denying further payment for injuries and damages that were unknown at the time of the settlement, but were attributable to the same accident?

A No, sir.

Q Forcing claimants and insureds to litigate or complain to the insurance commission before paying claims or disclosing information, where liability is clear?

A No, sir.

Q Denying contractual PIP benefits to insureds and no-fault claimants outright, or sending them to the other driver's carriers, and sometimes repeatedly refusing to make no-fault payments?

A No, sir.

Q Hiding, or influencing an insured to hide evidence?

A No, sir.

Q What was your practice, what were you taught to do, and what was your practice as far as informing the people that you dealt with what the policy benefits or coverages were, Mr. Christensen?

A I was instructed and taught that I was to inform them of all of their benefits, all of their coverages that they had and were entitled to.

[127] Q Did you ever have any situations where people were making claims and hadn't paid their policy premiums?

A Yes, sir.

Q Did you have any kind of instructions on how to handle that situation?

* * *

Q (BY MR. SCHULTZ) Do you recall the question?

A Yes. If a policy holder, I received a report, and the agent couldn't confirm that the policy was in force by the payment of premium, I was instructed and required to contact

the policy holder, advise them that if they didn't make the premium payment to the company or to their agent within a certain period of days, which was normally approximately twenty days from the due date on the policy, they would not have any [128] coverage for the date of loss.

Q Did you handle claims that involved situations where a person might be entitled to a rental car?

A Yes, sir.

Q How did you handle those claims, Mr. Christensen?

A I explained the rental coverage and what it entailed, what they were entitled to, under the rental coverage, to them.

Q Do you know what an appearance allowance is, Mr. Christensen?

A Yes, sir.

Q Did you have occasion to use appearance allowances in your work?

A Yes, sir.

Q Can you explain how you would go about doing that, and what you would tell a claimant or a policy holder about an appearance allowance as an option?

A Normally appearance allowance would be given on such things as a bumper, or maybe very minor damaged fender, something such as that, or even a possibly chip in a windshield.

Q And when you did that, what did you explain to the policy holder, or the claimant, as far as what [129] their options were?

A They could either have the repairs done, if it were a bumper they could have the bumper replaced as part of the repairs, or if they wanted to accept an appearance allowance, then would pay up to 50 percent of the cost of that bumper to them as a cash payment. And the appearance allowance, the bumper would not be replaced, the appearance allowance would not be entered as prior damage if they had a previous accident, or a subsequent accident, excuse me.

Q Did you, or was it your instruction, and did you make it your practice to explain those options?

A Yes, sir.

* * *

[130] * * *

CROSS EXAMINATION BY MR. HUMPHERYS:

Q Mr. Christensen, do you remember being told, either through the seventies or early eighties, that Mr. Summers was preparing phony documents in files?

A No, sir.

Q That would be significant to you, wouldn't it?

A Yes.

Q I want to represent to you that Marilyn Paulsen testified a week or two ago, here in this courtroom, under oath, that she believes she told you back in the early eighties that he had been phoneying up documents in the file. But you don't remember that, do you?

A She may have told me, but since I was not [131] handling the files, and I was not interested in it --

Q So you don't remember that right now, do you?

A I don't remember her telling me about it.

Q And you don't remember Mr. Summers telling you about any of these things, either, do you?

A He did not tell me that.

Q Okay, so you're certain that Mr. Summers didn't tell you that he had phoneyed up documents, but you don't remember whether or not Mrs. Paulsen told you; is that what --

A That's correct.

Q That's what you're saying. Okay. Now, when your sworn testimony was taken in this case, you were still an employee of State Farm, weren't you?

A Yes, sir.

Q Now, I think you testified, and see if this is correct, you never did work with Mr. Summers on any of his files, did you?

A Involved in the handling of them?

Q Yes.

A No, sir.

Q And you really didn't know much about any of the ways he handled his files, BI files, did you?

A No, sir.

Q You agree, don't you, that memories fade over [132] time?

A They do.

Q I think Mr. Bennett said a very astute comment, he said documents remember better than memories, or words to that effect. Do you agree with that?

A Yes, sir.

Q Have you been asked to produce your PP&Rs?

A Here?

Q Yes.

A No, sir.

Q Do you have any of your old PP&Rs left?

A I probably have some at home, yes.

Q How many years do you have?

A I wouldn't know for sure.

* * *

[135] * * *

Q Now, you mentioned that you did a little bit of BI work, very minor work. Wasn't that a rare exception that you got involved in BI work?

A Yes, it was.

Q In fact, probably less than 2 percent of all your time was involved in BI work?

A That's correct.

Q Now, let me see if I understand. Are you telling the jury that in the entire thirty years of work at State Farm, that you always paid fair value, without exception, and not a penny more, not a penny less?

A Yes, sir.

Q There was never a claimant or an insured that ever got less than fair value from you; is that what you're saying?

A That's correct.

Q You can state that emphatically, even though you may not remember all of the cases you've been involved in?

A I certainly have. I have a clear conscience on all of them.

[136] Q All right. Well, let's talk about that for a minute. You mentioned about an appearance allowance. Now, if I understood what you said right, you said that you would go to a claimant and tell the claimant that if they wanted to receive money instead of the repairs, you would only give them 50 percent of the value; is that right?

A Of that particular item.

Q Now, Mr. Christensen, isn't it true that a claimant would be entitled to 100 percent if he were to insist on it?

A Absolutely.

Q But you would represent that you would only give 50 percent.

A As an appearance allowance.

Q Right. And you gave 50 percent appearance allowances from time to time, didn't you?

A If that was agreeable with them.

Q Now, isn't it true that that's less than fair value, Mr. Christensen, by 50 percent?

A No, sir, because they still had the bumper, and they got paid for the minor damage, or the scratch that was there, which was their decision.

Q Now, Mr. Christensen, under the policy, I'm sure you've read it before, aren't they entitled to the [137] cost of repairs, full value for cost of repairs? If it cost $100 they'd be entitled to $100, wouldn't they?

A Yes.

Q And if an insured wanted to take the money instead of the repairs, he had that choice, didn't he?

A Yes, he did.

Q And he was still entitled to the $100, wasn't he?

A Yes, sir.

Q But you would only offer 50 percent.

A But if he insisted, I paid him for the full value.

Q So there were some that you paid the full 100 percent.

A Yes, if that was their desire.

Q But then you would represent to all of them that it was your customary practice to only pay 50 percent; is that correct?

A If they wanted to accept it, yes.

Q Okay. Now, that's not fair value, is it?

A Yes, sir.

Q You recall being involved with the use of salvage parts?

A Yes, sir.

Q And you encouraged that, didn't you?

[138] A I used them when they were available.

Q Now, were there always written forms, in the entire thirty years you were practicing, or adjusting claims, I should say, where you would disclose what kind of salvage parts you were using?

A Yes, sir.

Q And the entire thirty years you would always give the insured or claimant written documentation of the salvage parts?

A I always attached a copy of the written form to a copy of the estimate that was given to the owner of the vehicle.

Q And what would the form say?

A It would indicate that they were like kind and quality, and that if it was used parts they were guaranteed for one year from the time of the estimate.

Q Did any of them resist taking used parts?

A No, sir.

Q They all took used parts?

A Yes, sir.

Q Would they be entitled to have replacement with new parts if they insisted?

A If they insisted, yes.

Q And yet you would then prepare the estimate based on used parts.

[139] A Only if they agreed to them.

Q But I think you just said you always did that, correct?

A If they were available and they were good used parts.

Q Well, now, Mr. Christensen, isn't that paying less than fair value, if they're entitled to new parts and you give them used parts?

A They would be receiving parts that were in the same condition as the parts that were on their vehicle, which would be like --

Q But they're entitled to new parts, correct?

A Which would be like kind and quality.

Q But they're entitled to new parts, right? If they insisted on it, you'd give them new parts?

A Yes.

Q Have you been involved in pride month over the years?

A Have I been involved in pride month?

Q Yes.

A What do you mean by "involved in pride month"?

Q Do you recall State Farm having pride month during the eighties?

A Yes, a program.

[140] Q And you were involved in that as part of the Logan unit, or the Ogden unit, whichever ones you were part of?

A We were included in it.

Q And there was an incentive in the form of recognitions, or in the form of pizza parties, or some other kinds of things, if you would accomplish certain things. Do you remember that?

A I don't remember that we ever had pizza parties or that.

Q Okay. Well, in any event, there was some kind of recognition or award in pride month; do you remember that?

A No awards or that, that I was aware of.

Q Okay. Maybe you didn't receive any. But do you recall in pride month, and you would be compared to other units in the state regarding how many appearance allowances you were able to successfully negotiate?

A It would appear on the thirteen-week report as to the office.

Q And that would also include how many salvage and used parts that you used over new parts, correct?

A Probably would, yes.

Q And wouldn't there be what's called a kind of a cost savings, where they would report how much was [141] saved off of 100 percent, if you had to pay 100 percent instead of the appearance allowance?

A There may have been. I did not see any cost saving reports on the ones I received.

Q And the units that would do the best in using these appearance allowances or used parts, that type of thing, they would win the pride month. Do you remember that?

A I would assume they would.

* * *

REDIRECT EXAMINATION BY MR. SCHULTZ:

Q Mr. Christensen, with respect to the questions about appearance allowances, did you explain the options to the policy holder that they had?

A Yes, sir.

Q And was one of the options, if they wanted to, they could take the payment for the full price of the repair?

MR. HUMPHERYS: Objection, leading.

THE WITNESS: Yes, sir.

MR. SCHULTZ: Well, Your Honor, they brought it up. I'm just asking --

THE COURT: Sustained.

[142] MR. SCHULTZ: I'll ask it a different way.

Q (BY MR. SCHULTZ) What were the options that you explained regarding appearance allowances?

A If they took an appearance allowance and they were in a subsequent accident, the bumper would not be considered as prior damage. If they took a cash settlement for the full amount of the bumper and not replace it, then it was considered as prior damage in a subsequent accident.

Q And did you explain those options to the people?

A Yes, sir.

Q And would you take an appearance allowance, Mr. Christensen, on a claim, if the person you were dealing with did not agree to it?

A No, sir.

* * *

[144] * * *

Q Mr. Christensen, was it your understanding during the time you worked -- Well, let me back up. Prior to the time that you worked for State Farm, you did have a period of time that you worked in a body shop?

A Yes, sir.

Q And in your work at the body shop did you have the opportunity to perform repair work on automobiles?

A Yes, sir.

Q Was it your experience in that work at a body shop that parts of like kind and quality, or salvage parts, were used in repairing vehicles?

A Yes, sir.

Q Did you view that as a dishonest method of repairing vehicles?

A No, sir.

[145] * * *

RECROSS EXAMINATION BY MR. HUMPHERYS:

Q Mr. Christensen, let me make sure I understand. You told claimants and insureds that if you gave them money instead of repairing their car, that if they got in a wreck again, you would consider that bumper prior damage?

A If we had paid for it, yes.

Q All right. And so let me see if I understand what you're saying. If it weren't repaired, then that would be considered prior damage, correct?

A Yes, sir.

Q But if it was repaired, why would you consider it prior damage?

A It was not considered prior damage if it was repaired.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF DAN COCHRAN, JULY 19, 1996

[Vol. 27, R. 10282, commencing at p. 152]

* * *

DAN COCHRAN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Cochran, will you tell us your full name and what city you reside in?

A My name's Dan Cochran, and I reside in Bloomington, Illinois.

Q And who are you employed by?

A I'm employed by State Farm Mutual Automobile [153] Insurance Companies.

Q And what is your title with State Farm?

A My title at State Farm is corporate records administrator, I am responsible for overseeing the company-wide records management program.

Q How long have you been in that position?

A I've held the position of records administrator since October of 1993, so a little over two and a half years.

Q And prior to that, just very briefly, give us a rundown of the jobs that you had at State Farm before then.

A I've been with State Farm since 1987, worked in two different regional offices and our corporate headquarters. The positions that I've held include an underwriter in our fire company, underwriting homeowners insurance, a supervisor of a micrographics records unit, an auto underwriter, underwriting automobile insurance, and also a supervisor, supervising the payment plan department for people who pay their insurance on a monthly basis.

Q Now, in 1983 when you became the records administrator of State Farm, can you just briefly tell the jury who you administrate over, or what your position is with respect to the various regions? The [154] jury's heard evidence that State Farm is divided into some twenty-eight regions. And can you tell them who you work with, basically, in your job?

A That's correct, State Farm does have twenty-eight regional offices, along with our corporate headquarters in Bloomington, Illinois. I work through a group of records coordinators who have the responsibility of coordinating the program with me on a company-wide basis. We have one coordinator per regional office that we work with. We also have coordinators representing each major department back at our corporate headquarters.

Q So is there a records coordinator in the Mountain States Region?

A Yes, we do have a records coordinator in the Mountain States regional office.

Q Mr. Cochran, Mr. Williams, who's in court, here, will be testifying after lunch, but I want to get an idea from you, first of all, about the number of records that State Farm deals with. First of all, the jury's heard, you know, a reference in this case to claim files, and obviously you know what those are from your background and experience.

A Correct.

Q Approximately how many claim files does State [155] Farm have that are active in offices and/or storage?

A We have in excess of 40 million files on a company-wide basis that represent auto and fire closed claim files.

Q And have you, in your capacity and in your position, have you done some study to indicate what the average number of pages are in a claim file?

A Yes, through records storage we need to know how many files, how many documents are in those files. And on

average there are forty documents in an auto or claim file. Auto or fire claim file, excuse me.

Q So forty pages of documents per claim file?

A That's correct.

Q All right. Have you been caused, in your capacity as records administrator, realizing -- And I'm getting ahead of myself, let me back up for just a minute. In addition to claim files within the company, are there a number of other documents that are generated in the State Farm business?

A Yes, State Farm is a large organization with over 70,000 employees, servicing 65 million-plus policy holders throughout the United States and Canada. And last year alone State Farm generated in excess of two and a half billion--and that's not million, that's billion--records in servicing those policy holders.

[156] Q And do you have an estimate as to how many records State Farm would have company-wide in its possession, not just that were generated last year, but that are in its possession, to form the various aspects of its business in its claims offices and otherwise?

A Yes, in reviewing the records that the organization currently is maintaining, we calculate that that's in excess of 10.9 billion records currently within the State Farm organization.

Q As part of your job as a records administrator, do the record coordinators from the various departments in Bloomington, and then out in the twenty-eight regions, do they report to you and/or do you receive data and information regarding records that come up for obsoleting and are recycled?

A Yes, the regions do report back in to corporate headquarters the weight of records that, and documents that are destroyed and recycled each year.

Q Now, do you know if State Farm has received any awards as being progressive in recycling?

A Yes, I know that our administrative services department, our waste management area has been recognized by other groups

in recycling, and has been portrayed in a couple of recycling magazines as being very proactive in recycling a high percentage of the [157] waste, not only paper, aluminum cans, anything out there, to be environmentally friendly.

Q With respect to the records that will come up which we'll be talking about in a minute -- and we'll show the jury some things on the screen about how long things are kept--with respect to the records that were obsolete last year, and came up to be recycled, why does State Farm keep track of how many pounds of material were recycled?

A Part of a recycling program, along with being environmentally friendly, there's revenue generated from when you recycle aluminum cans, when you recycle paper. So when you go through a vendor that will recycle paper, they weigh that and you get reports back on the weight of the paper that you have recycled.

Q Approximately what was the weight of paper that State Farm recycled last year?

A It was in excess of 7,000 tons.

Q So greater than 7,000 tons?

A Tons, correct.

Q Now, did you go about trying to make a determination as to, realizing how much weight of paper was recycled last year, did you make a determination as to how many sheets of paper that would be, approximately?

[158] A Yes, that would be, in 1995, that we recycled 1.6 billion records.

Q How did you do that, Mr. Cochran, just briefly? Did you, were you able to know that if you have a ream of paper, how much that weighs?

A That's precisely how we did it. Basically, to one pound of paper there are 100 sheets. So through simple math you're able to calculate the actual tons that were recycled versus, times the pounds, times how many sheets, and you can come

up with 1.6 billion eight-and-a-half-by-eleven records are destroyed.

Q When you accepted the assignment in 1993 to be the records administrator for the company, thereafter did you participate in formulating and creating the records management manuals, guidelines, and the retention schedule that the company keeps its documents by, since that time?

A Yes, my responsibility as records administrator was to create a records management manual so that all employees in the organization would understand correct records management philosophies and principles, and along with that, part of a records management manual, are retention schedules which outline how long records must be retained.

Q Now I'm going to ask the clerk to mark this [159] as an exhibit. She's marking as Exhibit 154-D the records management manual. Is this a document that you participated in with other people on a steering committee in creating?

A Yes, the records management manual was developed with involvement in the steering committee members, along with my association, with the Association of Records Managers and Administrators, that's an international organization, and numerous college textbooks, resources from throughout the country from records management experts that we could obtain to develop a sound records management program.

Q In developing this manual, 154-D, Mr. Cochran, was there anything in the process of developing this manual that was ever indicated to you, or that you ever indicated to anybody else, that there was any ulterior motive behind this manual and what it provides in terms of doing away with documents improperly that are requested in litigation?

A Absolutely not. No one ever instructed me, nor would I instruct anyone that, for purposes of a records management program, is to do anything such as that.

Q All right.

MR. BELNAP: I'd move for the admission of [160] 154-D.

THE COURT: Any objection?

MR. HUMPHERYS: No. Received.

(WHEREUPON Exhibit Number 154 was received into evidence.)

Q (BY MR. BELNAP) Now, in this manual does it provide what the purpose of the records management program is?

A Yes, in the initial chapter we outlayed, as you have on the overhead, there, the reasons for developing a records management program.

Q And have you, in the manual, also provided some goals for this program?

A Yes. The goals were listed also in that first chapter. Those were the goals that we initially established back in November of 1993, when I came on board. And those four goals are outlined there with the emphasis on, that the main underlying principle of the records management program is to ensure that the organization is maintaining and keeping the records that it is required to keep.

Q And in operating this program after its formulation, have you attempted to follow these goals, and have they been followed to the best of your knowledge, Mr. Cochran?

[161] A Yes. The program was developed based on those goals. We continue to utilize those goals and communicate them to employees, and we are following those goals.

Q And what efforts did the committee that you were part of make, or go through to determine how long you need to keep certain categories of records?

A Well, basically there are two things that are crucial when you determine how long to keep records. First of all, there is guidance out there, regulatory agencies, federal agencies, they set forth minimum requirements to keep your records. The state of Utah provides requirements. The federal government provides requirements. So the first step is to see how long you're required

by the regulatory bodies to keep these records, what they call their legal retention for these.

The next step is that, obviously, State Farm needs its records for other than legal purposes. We need those to service the policy holders. We have to have those records readily available for our corporate memory. So then we talk to the departments, and they assess how long the records need to be retained or kept to satisfy day-to-day operational requirements.

Once you know those two things, how long you are legally required to retain the records, and then the [162] second element of how long the departments know that they need to have these records to service the insurance business, you put those together, and whichever is longer, if the legal requirement is greater than that, if the business requirement is greater, that develops the final retention.

Q Okay. Now, in connection with this, ultimately, from the research that you've told this jury about, did, as part of this program, you create a retention schedule, one page of which I'm putting up here as an example?

A Correct, based on those inputs from the legal regulatory authorities, the departments who actually use this information, we developed the retention schedule, one page of which you have on the overhead.

Q Now, on this retention schedule, does it go down by states in these different categories of records that we've taken off of this one-page example?

A Yes, there is one base time frame established to keep records, and then there may be state variances as you see there. In the first example you can see where Utah is listed across on the bottom, there, with a "CY plus 5," which means that those records are to be retained current year plus five, after they become obsolete.

[163] Q So just using this as an example, if we were to take auto claims student records, the base time period that you've

determined as a company that you are going to keep those is two years; is that right?

A That's correct.

Q But then in your research you have found that there are some other state requirements that have come into play, and you keep them longer in those particular states; is that what that means?

A Yes, we must honor the requirements set forth in those states.

THE COURT: When you reach a logical breaking point we can recess for lunch. It doesn't matter which block.

MR. BELNAP: Because I can do it now or I can go a few minutes longer, Judge.

THE COURT: Why don't we break. We'll take our luncheon recess at this time.

I will admonish you during the lunch break not to discuss the case, not to form opinions about the case, not allow anyone to communicate with you about the case, nor should you communicate about the case with anyone, and do not begin your deliberations. We'll be in recess about half an hour, I'll ask you to be in the jury room at 12:30 so we can resume about 12:35. We're [164] in recess.

(The jury left the courtroom.)

THE COURT: Let the record show the jury's left the courtroom. We're in recess.

(Brief recess.)

THE COURT: We're back on the record, the jury's returned to the court, the parties and counsel are present.

MR. BELNAP: There's a bag of cookies left outside that are left over, if anybody didn't get enough.

THE COURT: Sounds good.

Q (BY MR. BELNAP) Mr. Cochran, when we took a break, we were talking about the retention schedule, and you had talked about the fact that you were a party on the committee that worked on creating that. Do you recall that testimony?

A Yes, I do.

Q Okay. Now, in coming up with the retention schedule, this schedule that we had up on the board, Mr. Cochran, you indicated that the base period that the company has determined is current year plus two; is that right?

A That section, there is a definition page out of the manual that talks about what a retention period [165] is, and shows the format being the current year plus two is the format that we use.

Q And then as we looked at the actual schedule, there is some variation in that, depending on what each state may have a different requirement, then; is that basically as I understand it?

A Correct, as we reviewed last time, each state may have greater requirements to retain the records.

Q Now, as you went through to create this manual, was part of that process an effort to try and define within the company, of these ten billion or whatever records that you have in your possession, what is and is not a record that you then have to put under the program, mark it, retain it for the time period?

A Correct. You see in front of you a definition there that defines what records are, and it was crucial that we outline to employees so they understand what is a record, and what must be retained by the company.

Q Now, in looking at this definition, it includes microfilm, magnetic tape, data processing, policies, decisions, obligations, and business activities records; is that correct?

A Correct, it's a very broad and inclusive definition, and it doesn't matter what form the record [166] is in, it must be retained.

Q Now, one of the plaintiffs' witnesses talked about another one of the definitions in the manual that refers to non-records, and I think he may have used the word, or when he talked about that, that he felt like that was some sort of a curious, or perhaps a gimmick.

We've just looked at what you defined broadly as a record, and I'd like to ask you about non-records for a minute. When you were involved in working on creating this manual, did you refer to other sources for definitions that are accepted in the records management industry?

A Yes, we virtually referenced hundreds of different sources for definitions.

Q Was one of those sources that you looked at, as you've stated, regulations and rules from states, such as the state of Illinois?

A Yes, State Farm's home office is in the state of Illinois, and requirements that the department of insurance sets out as regulations apply very directly to State Farm.

Q When you created, for purposes of your records management manual, a definition of what a non-record is, did you refer to these regulations, including regulations from the state of Illinois, the [167] state you're incorporated in?

A Absolutely. The Illinois Department of Insurance specifically spells out that there are non-records that will be in the possession of insurance companies. And that was not something that we created, that was something we followed, as set out by the Illinois Department of Insurance.

Q Okay.

MR. BELNAP: Your Honor, can we approach the bench?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. BELNAP) As part of coming to a definition of non-records, did you refer to the Illinois regulations, in part, on that subject?

A Yes, the Illinois Department of Insurance regulation 109 specifically sets out the definitions. Not only does it define what a record is, it sets forth what is considered a non-record: Extra copies of materials, stacks of preprinted forms, and we incorporated that into our records management manual.

Q So when the plaintiff's expert felt like this was a curious thing, or a gimmick, did, on your part was there any gimmick involved in using this definition?

[168] A Absolutely not. Using that definition was a result of good, sound research, and establishing who regulates the records that you use in an organization, and how you should define those records and non-records, and that's how we arrived at our definition.

Q Thank you. Now, in the actual use of this program, can you just briefly tell the jury how the program operates in terms of company records that have fulfilled an immediate business need, but you're going to maintain them for the current year plus whatever years apply to that particular part of the record?

And I want to put something up on the board that may help us track this. Do you, as part of your regional coordinators and in your administration, are the records boxed and then marked for when they can be recycled, or thrown away?

A Yes, basically a record has a life cycle. There is an active time frame for where you need immediate access to that record. The employees will store that in a file cabinet next to their desk.

Over a period of time that record no longer has an immediate value to the employee who uses that record. That record will then be boxed, labeled, the retention schedule will be consulted to see how long that record should be retained, and that will be sent to [169] a records center

within a State Farm building and put on a shelf and set aside until it has satisfied all retention requirements to keep the information.

Q As part of that process, Mr. Cochran, is there tracking that then takes place to when the life, or the storage life of that record has been fulfilled in terms of its business need, and its legal requirements within the retention schedule?

A Absolutely. Once that record has met its business life, a lot of times, that useful life, it is sent to the records center. It is retained in the records center for a period of years to satisfy all legal requirements to keep that information.

Then, on an annual basis, prior to those records being destroyed, the individuals who run the records center will then notify the individual who sent the records down, and they'll say, "John Smith, these records were sent to us two years ago. By the date you put on the box, these are now eligible to be destroyed. Is that still the case?"

Q Okay, and let's get to that point, because counsel, with the witness that talked about this program, held up in his hand a stack of certificates of destruction, and I want to ask you about that. I'll put that back up in a minute.

[170] Do you ask the people that are administering this program to make sure that -- Let me rephrase it. Do you ask, with respect to documents that, before they're destroyed, there be some check made that they have, in fact, been kept the amount of time, in compliance with the program?

A Absolutely. The records are reviewed by the group to see if that group has now met the retention requirements prescribed on the retention schedule for retaining those documents.

Q And does this speak to that in the manual, Mr. Cochran? Is that what that is speaking to?

A Yes. Annually a review of records is done, with a records destruction. Part of that review, those records will

be boxed and sent to records storage, because it may be five, ten years before they will have met legal obligations. Those bullets point out that if you, during a destruction review, identify records that are not eligible to be destroyed, and still must be retained according to retention schedules, you follow the guidelines and you send those to records storage.

Q Okay. And why does, as a company, do you have somebody sign saying that they've certified on reasonable inquiry that these have been authorized for destruction?

[171] A It is very important to get across to these individuals that the only records authorized for destruction are those who have met the time frames established on the schedule. This holds someone in the region, along with the other employees underneath them, personally accountable, that they have reviewed the retention schedules in detail, they have set aside the records that are now eligible for destruction based on the retention schedule, and those records are destroyed.

And so they are certifying to us that the records that were not eligible for destruction are retained, and that those that were eligible for destruction have been sent off site for destruction.

Q Is there, in this program, Mr. Cochran, is there discretion, or leeway on the part of an employee in the way this is planned and set out, to pick and choose what they're going to destroy early, or keep longer, just at their own wish?

A No. The employees follow the guidelines as any other rule or procedure established by the organization. They take a group of documents, and if those documents have met all legal requirements prescribed by the law, they have met the business purposes that they were set aside for, they are now destroyed. They do not have a choice to retain or not [172] to retain.

Q Now, is there a program in place, Mr. Cochran, that if there is a reason, say, in litigation, or some other reason to extend the time for those records, that a hold order can be placed and notified that those retention schedules are overridden, basically?

A Yes, there is. One of the goals that you first listed up there, the four goals that we've identified for the program, one of those said that there must be a mechanism in place to immediately stop all destruction activities for any records where we're notified that they may be involved in a legal action, or some other regulatory body.

And so we have the hold order mechanism in place to communicate that to employees so they understand that now we are imposing a higher retention requirement on these records, and they cannot be destroyed.

Q And with respect to these hold orders, do you have in place a mechanism where the notification for that immediately goes out, and the regional people, or the departments that are affected, are immediately putting that in suspension?

A Yes. This was such an important area, that [173] we had to make sure the immediate notification was in place. When I receive a notification that we need to hold documents, I will call all affected departments, in any of the twenty-eight regions that are affected, and advise them over the phone to suspend all destruction activities, and that they will, in turn, receive a followup written communication from me which will spell out exactly what records must be retained.

Q Is there a procedure for releasing the hold orders?

A Yes. These records are held to satisfy whatever requirement we were asked to hold them for. Once that obligation has been met, if they were held for a trial and now that trial is concluded and those records are released, we then notify them to return to the normal retention period that existed on the retention schedule for how long to keep those records.

Q Now, when this manual that I think is Exhibit 154, if I'm not mistaken -- Is it there in front of you?

A No, it's not.

Q 154-D, this program evolved and was created during the time, or was this program evolving and being created and formalized from the time that you were hired as administrator?

[174] A Yes, virtually from my employment as the records administrator in October of '93, this evolved until the manual was published in June of 1995.

Q All right. Mr. Cochran, is this a copy of one of the hold orders?

A Yeah, as I read through that, that's a hold order notification that would be sent out, and identifies the records that must be retained.

Q Now, for instance, this is from Dan Cochran, subject, records hold order, and it's being sent to the records coordinator here in the Mountain States Region; is that correct?

A Correct, that's being sent to Mark Carlson, the records coordinator.

Q And this talks about holding some claim files closed in '92 that were reviewed by the Colorado Division of Insurance in their recent market conduct examination. Is that right?

A Correct.

Q And this is an example of some documents, for whatever reason, the company said, "We need to hold longer than the retention period."

A Yes, we advised them to hold those records and set them aside so they were not destroyed.

Q Now, in the course of this program, did you [175] send out a letter to private attorneys that were defending State Farm insureds?

A Yes, in the summer of '95 we sent separate letters to attorneys that were defense counsel representing State Farm, they had requested some guidance from us in how long to

keep this information, that had been representing us for years. And we also wanted to make sure any original materials that were in their possession were returned to State Farm, because that was State Farm property.

Q Now, with respect to copies of materials that they had, this first letter, was it followed by a second letter that you sent out, Mr. Cochran?

A Yes, the first letter was sent out in July of '95, the second letter followed up shortly after in August of '95.

Q And what does your second letter do to clarify the position of what these counsel can do after they return the originals to State Farm?

A We wanted to clarify to counsel that originals, first and foremost, must be returned to State Farm so that they can be retained according to the retention schedules we have in place. We then advised them that copies are non-records, as described by the insurance regulatory code, and that there was no need to [176] incur expense to send copies to us to have us destroy them, that they were free to destroy the copies of any records that they had in their possession.

Q Mr. Cochran, just one other piece of information. In addition to the records that are maintained in the twenty-eight regional office buildings and the however many hundreds of claims offices that are around the country, because of the volume of records that State Farm keeps and maintains, do you have to rent each year outside warehouse space to keep and store records?

A Yes, to store the records that we are required to, we store them on in-house facilities, and we do rent facilities. And in 1995 alone, just to store the paper documents, not the ones that are on the floor out there, by the employees, but the ones that are sent to records storage, State Farm incurred a cost in excess of $4 million to pay for the storage of paper documents.

MR. BELNAP: That's all --

Q (BY MR. BELNAP) Well, one question. In these minutes that we've produced to counsel -- And let me just ask you this, first. In addition to the records management manual that we've been showing, did you and your group also put together a teaching manual to train the employees in proper procedure in this program?

[177] A Yes, we did. We worked with our education and training department to develop an introduction to records management. This is not a concept that is easily understood by many employees, so we wanted to ensure that the employees were aware of the records management program, and they knew how to read the retention schedules, they knew what a records hold order was. And that program was developed in 1995 also.

Q Now, in addition to that, did your group, in a manual dated July, 1994, create a very specific and technically oriented manual that went out to the regional coordinators so that they would know how to mark and preserve records, as well?

A The manual you're referring to, I believe, is the administrative services volume B, which was released to them in '94, advising how to send records to records storage, and how to mark those boxes.

Q Now, when you sent the training materials out, was that accompanied by a commercially-created video tape called "Buried Alive"?

A Yes, the "Buried Alive" video was developed by a national company, Commonwealth Films, and we used that in association with the training materials to increase the awareness of employees of the importance of records management, and why an organization must retain [178] records to satisfy its business and legal obligations.

Q Now, when you met with the group and the steering committee that created this program, there's a reference that counsel, in the materials that we've provided, has shown to the jury, I believe in October of 1993, indicating at any one time State Farm has a number, I think over 100,000 lawsuits, and they need to be looking for any available windows to be able to destroy records. Can you tell the jury what that meant, in terms of this program that you've outlined in this testimony?

A Yes, a window is described, a destruction window sometimes is, it's loosely referred to, basically all the things that we've laid out in front of you, your regulators from the federal government, the IRS, OSHA, and everybody requires you to keep records. State regulators set forth to require records. State Farm has business requirements for the records. On top of that, we will issue records hold orders which go above and beyond that.

And so what we say is that at some point you have satisfied all those tiers, and you get to this window, you have now met the legal requirement, you have now met the business requirement, you no longer have any hold orders available, so you reach this window.

[179] That window means that you are now clear, that these records are eligible and authorized for destruction. And it must be clear to people that you cannot destroy records until you reach that step, after covering all these other bases.

MR. BELNAP: Thank you.

THE COURT: Mr. Humpherys?

MR. HUMPHERYS: Thank you, Your Honor.

CROSS EXAMINATION BY MR. HUMPHERYS:

Q How are you, Mr. Cochran?

A I'm doing just fine.

Q I'd like to cover a couple of things with you before I go to some of the things Mr. Belnap covered with you.

MR. HUMPHERYS: And Your Honor, there are going to be two different areas Mr. Christensen and I are going to cover, but they should be covered fairly quickly in terms of question and answer, if that would be all right.

THE COURT: That would be fine.

Q (BY MR. HUMPHERYS) Mr. Cochran, you've talked about hold orders, and that State Farm sends out hold orders in order to hold records which have been requested in litigation.

[180] Do you recall that in this case, the Campbell case, we requested a copy of all of the hold orders that you had done?

A Yes, you requested, and we provided a copy of all records hold orders that had been issued by myself from a company-wide standpoint.

Q Right. There wasn't, as I recall, a single hold order in the Campbell case, was there?

A There was not a records hold order issued from corporate in the Campbell case. There were communications on a regional level. As Mr. Belnap noted earlier, there are 100,000-plus lawsuits that State Farm may be active in. Some of those are issued a hold order from a local level. Local counsel directly working with claims, underwriting, whoever is necessary, will ensure that a claim file, such as the Campbells', is preserved and retained throughout the entire trial.

On a national level, record hold orders will be issued from my area when we are talking about cases that may involve, "Let's hold all claim files for the entire state of Utah." Then we must get involved to override that retention schedule.

Q All right, now, there's an old saying that I think we've all heard, "Proof's in the pudding." You've said that this program was designed for years under your [181] direction, and one of the primary emphasis was to ensure that documents that were requested and that needed to be retained would be retained, and you had the hold orders in place to do that. And you've testified that, right?

A I don't believe that's a fair, correct characterization of my testimony. I've testified that we, the primary requirements of the program are to make sure we're retaining all records that we're asked to keep. We do that through retention schedules that satisfy Utah requirements, Illinois requirements, federal government requirements, satisfy business requirements. The hold orders are another step above that, as we discussed.

Q Right, and I appreciate that. But isn't it true that you were saying you issue hold orders to ensure that documents are not destroyed in cases where the documents have been requested?

A When we are notified of a retention order, either through counsel or through our own attorneys, that records need to be preserved in a case, then yes, records hold orders are issued from a corporate level on a mass basis, where we need to cover all records. And there's also individual communication from counsel to the local office in any one of those hundred thousand lawsuits, to discuss what needs to be kept.

[182] Q And this went into effect when? '94? '93? Was it '93?

A The records hold orders, basically I've been involved in issuing hold orders since 1994. The company has been issuing hold orders for decades.

Q All right. I'm holding in my hand six of the eight requests for productions of documents that Campbells have

made on State Farm in this case. The seventh and eighth set, I don't have, I have them somewhere in these boxes, but they were served on State Farm this spring.

The fourth was served on February 24th, 1994, and the fifth was a few months after that, and the sixth was served, it looks like sometime the first part of this year, or perhaps it was the end of last year, whenever it was. And yet you don't have a single hold order on any document we requested, do you?

A As I sit here today, I can't tell you, with the eight requests that we have here in front of you, if there's a hold order out there on one of our retention schedules for any one of those documents or not.

Q Didn't you just tell me that you had looked, and you didn't find a single hold order that pertained to the Campbell case? Didn't you just testify to that?

A No, I did not. You had asked me if I had [183] issued a records hold order from the Campbell case, and I said from a company wide standpoint, issued out of corporate, we had not. I also indicated that local counsel working with claims management had held documents, many of which have been provided to you. Thousands of them, I believe.

Q Show me one hold order that pertains to the Campbell case, Mr. Cochran.

A The hold order stands for itself, that the Campbells' claim file from 1981 is still in existence some fifteen years later, numerous documents that you have --

Q I'm not asking for the documents. I'm asking for the hold order. Show me one hold order that has ever been issued by State Farm that pertains to the Campbell case.

A As I stated earlier, there has not been a hold order issued by myself since 1993 when I took this position. I have checked with the Utah claims organization, and they said that they have ensured that documents associated with this,

the Campbells' claim file, other elements, have been preserved specifically for this lawsuit.

Q Did you know that we had requested documents nationwide, not just from Utah? Did they ever tell you [184] that?

A I was not involved in the actual discovery process and production of documents for this or any other lawsuit. That's not within my responsibility.

Q So they didn't tell you that, did they?

A I'm sorry, they tell me what?

Q They didn't tell you that we had requested documents nationwide, not just in Utah?

A What I have been told, in reviewing this case, is that you have requested numerous documents, and virtually thousands of documents have been provided to you.

Q All right. So the answer is no?

A I was not made aware that a request was issued on a nationwide basis, because I do not get involved in the discovery process or production of documents.

Q All right, and so no hold order was ever issued?

A A hold order would have been communicated from local counsel through local claims management here in the state of Utah.

Q And should have been to you for company-wide documents, shouldn't it?

A If there was a retention order for these [185] documents, if they were required to be held for this case, and counsel advised me, then yes, we would issue a hold order.

Q But you were not advised. Okay. Now, let me ask a couple of other things. First of all, this records retention program that you've been describing, it is universally applied to all of the State Farm companies; is that correct?

A Correct. All State Farm Insurance companies are included in the scope of the program.

Q Now, do you recall in the minutes to the meetings that you had -- we've made this an exhibit, steering committee minutes on records retention management -- do you recall having a report sometime in June of 1993 from a Jim Latham or Latham, regarding the problems associated with the Singh case?

A I was not aware of the committee until October of 1993, when I came from our Oklahoma region to the corporate headquarters.

Q So you're not aware of that?

A I would have not been at that committee meeting, so I would not have been in on any discussions, or know what was discussed at that meeting, no.

Q Okay, well, let me rephrase it. Are you aware of the problems that were created to State Farm [186] when the judge in the Singh case began to order production of documents?

A I'm not very familiar at all with the Singh case. I have heard it mentioned a couple of times, but I am not aware of the specifics of that case, or things that State Farm had to do as a result of that case.

Q Isn't it true that one of the reasons you went into this retention program, or destruction program, was to ensure that a judge would never be required, or would never require State Farm to produce more documents which would hurt it?

A Absolutely not. The reason for this program, as we've stated, is to make sure that we are meeting the requirements that the regulators ask us to do. My goal is to ensure that if we are asked to keep a record by Utah, by the IRS, whoever, that that record is retained. And that is one of the underlying goals, and the main premise of the program.

Q Okay. Cover a couple of other things with you. What is image, or optical imaging, or electronic imaging?

A I'm not an expert in electronic imaging. Through my association with the international association, ARMA, Association of Records Managers and Administrators, I'm aware that that is basically a data [187] capture, or a way to take paper documents and put them onto an optical disk for storage.

Q Right. And you can store hundreds or millions of documents in very small amounts of disk space, can't you?

A Disks fit into a juke box which comprise a large computer system. On one individual disk you can maintain several documents, and then you also have the process of scanning those documents into the system, maintaining those documents, migrating them from system to system over the years, and substantial costs associated with those storage devices, yes.

Q Isn't it true that in the minutes to your meetings you instigated an electronic imaging and storing program, as well?

A I did not instigate --

Q State Farm, excuse me?

A State Farm is in the process of storing policy holder records on optical disk. For years we have used microfilm technology to store those policy holder records. I have supervised one of those units in the past. And now we are moving to optical disks to be able to store some of those records.

Q Now, Mr. Prater testified how, a few weeks ago, or maybe it's a month or two ago, I can't remember [188] any more the time, that State Farm had come in and optically scanned all of his thirty or so boxes of documents, and they, that whole quantity of document storage was reduced to a disk that he could hold in his hand. Or maybe perhaps more than one, but all within a handful. Has that been your experience?

A I believe that Mr. Prater did testify that he had a few thousand documents who, that were moved onto one disk. But Mr. Prater's not charged with keeping 10.9 billion records, and trying to maintain that on an optical disk.

Q All right, I appreciate that. But when we're talking about storage, we're talking about storing electronically, too, aren't we? Not just paper costs?

A Storing -- The cost that we discussed there, the $4 million figure, was for paper cost only. It was not to include that.

Q And isn't it true that part of what you're doing now is converting, to the extent possible, into electronic storage?

A There is no conversion taking place. There is a process, from the day that we put an electronic imaging application into an office, that we will store policy holder underwriting type records, applications, things like that, on an optical disk so that they are [189] more readily accessible to the underwriter, that if they get a call from an insured, one advantage of optical disk is that image can be recreated virtually on the computer screen in front of you, and you can answer questions to those policy holders immediately, and it provides excellent customer service.

Q Mr. Cochran, I know that you love records more than perhaps we do, and you love to talk about them. But we've got limited time today, and if you could just please answer my question, we could get done a lot quicker.

MR. BELNAP: Your Honor, I believe he was answering the question.

MR. HUMPHERYS: Well, he was making speeches about all kinds of things.

THE COURT: I think it's a good instruction to have him answer the questions. Listen very carefully to the question, and answer the questions.

THE WITNESS: I'm just trying to answer them as truthfully as I can.

MR. HUMPHERYS: I know, and I'm not being facetious when I say that this is your baby and it's something that means a lot to you, and I recognize that. But I appreciate the entire system is something we can't review today.

[190] Q (BY MR. HUMPHERYS) What I'm suggesting to you is that, isn't State Farm expending its resources to try and have their communications, E-mails, interoffice communications, memos, minutes, CORs, and other forms of communications, to be transmitted and stored optically, meaning electronically, inside a computer or a disk?

A I don't believe that all of the things that you have stated there, the goal is or are currently, or even in the near future, expected to be moved to optical disk. State Farm is, as I've stated, currently just got into optical disk last year, and we are using that for our policy holder records. And I'm sure that will expand in the future.

Q Do you recall in your meetings indicating that that's exactly where you're headed? Do you want me to refer to that, or are you satisfied with that representation?

A I'm satisfied with the representation that I've said we are currently doing that for policy holder records. In the future that will expand. Exactly what that will expand into, I am not involved on the imaging committee.

Q I don't want to spend a lot of time on this, it's a small minor item.

A I understand.

[191] Q I just want to indicate, image storage does decrease warehouse storage, doesn't it?

A If you factor in the physical space that the papers would occupy versus the space that an optical disk would take up -- the cost would be substantially more for that -- but I believe that, yes, the space for that disk -- You also must

factor in and include in your observations of that the optical disk drives to store that, storing the optical disk drive, backing it up off site, the computer system to maintain that. So there are other things, other than this diskette that we see, that go into the storage of optical media.

Q Okay, I'm not going to ask you another question about that. Let me cover another point, here.

Mr. Belnap said that you were looking to the Illinois regulation regarding non-records as a way to destroy some documents that you don't think are required, and I would like to just take a minute to explore that with you, because Mr. Prater did talk about that.

Now, in this definition -- And by the way, I don't have the subsequent pages, and the court has indicated when I get copies of those, that if we need to we'll have you come back and discuss this. But just based on what I do have that was given to me today, [192] non-records material, it lists, let's see, material not filed as evidence of the company's administrative or business activities, or for informational content.

The next item, extra copies of documents or reproductions of documents. Third, stocks of printed or reproduced documents kept for supply purposes. Next, books, periodicals, newspapers, and posters, and so forth.

Now, let's look at the definition of documents under the, a different section of the code that pertains to insurance companies. Documentation is defined. It includes notes and work papers. Do you see that there?

A I see where it says documentation. I'm not seeing where it says records, but --

Q Excuse me, notes, work papers. Did I say records?

A I believe you prefaced that by records.

Q I'm sorry, documentation is defined to include notes and work papers. Do you see that?

A Yes, that would include the work papers that we have in our accounting department.

Q Okay. And then in the Illinois records it specifically says, "As applying to insurance companies, that each company," let's see, "for examinations," that [193] is that the department of insurance can come in and examine the files properly and see what's happened, let's see what they indicate. "Detailed documentation." Now we've just read that documentation includes notes and work sheets. Work papers. "Shall be contained in each claim file in order to permit reconstruction of the company's activities relative to each claim file."

Now let's look at how you define non-records.

MR. BELNAP: There's two pages on that.

MR. HUMPHERYS: Yes, I see that, thank you.

Q (BY MR. HUMPHERYS) Okay, now let's go to the second page. I wish I'd been better prepared, but I didn't know you were going to go into this. Oh, there we go, second paragraph. Thank you. You see right there the word "work papers" are defined as non-records?

A I see that. Directly in front of that it says, "anything that has no apparent or informational value. For example, correspondence, work papers, preliminary drafts." If I was to sit down and write a memo to one of my records coordinators asking them, had they taught the records management educational program, I would write that up, I may give it to a secretary to have it typed, I may run it through my assistant to have her proof it grammatically. My handwritten notes --

Q I think you're beyond the scope of my [194] question. I said, do you see where it says that?

A I'm sorry, I was trying to define those for you. I'm sorry.

Q Do you see where it says, in the definition of non-records, anything about work sheets or notes like that?

A I see where it says up at the top, "material not filed as evidence of the company's administrative or business activities, or for the informational content thereof."

Q Yes, and aren't worksheets part of the business activities? That's what they're doing. That's what you use them for, is to perform your business activity, isn't it?

A We do use work sheets, and I don't believe that we referenced work sheets in our definitions. We talked about working papers.

Q All right. And so your own definition, isn't it true, Mr. Cochran, runs counter to the very portions of the code which we've just looked at?

A Absolutely not. Those definitions have been reviewed by hundreds of individuals. We had our records coordinators, we had the steering committee, we had legal counsel review that.

When you use that definition alongside with [195] the definition for records, and it says that if there's any question in your mind, defined in a record, as to whether that material should be retained, then you must keep it. You do not have a choice.

Q Oftentimes the only way to find out what really happened in a file is to look at the notes and worksheets, isn't it?

A To look at what happened in a file is to review the documentation that should have been saved in that file. Anything that was -- If there was handwritten notes taken by a claims adjuster --

Q Should remain in the file?

A -- by an underwriter, they should remain in the file.

Q Even if there are notes or work sheets, they should remain in the file?

A If the adjuster conducted an interview, made some handwritten notes, talked to the supervisor, made some

handwritten notes, compiled those into the final document, the final document carried forward all the information, what we are saying, what the Association of Records Managers and Administrators is saying, and the Illinois Department of Insurance, is that information does not continually need to be carried forward if it's included in the final product.

[196] Q And if buck slips or yellow post-its are not included verbatim in some other document, they should remain in the file, shouldn't they?

A If they are pertinent to the file and they are not incorporated in another document, yes, they would be retained.

MR. HUMPHERYS: Thank you. Mr. Christensen will now ask the follow-up questions, if that's all right.

CROSS EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Cochran, you indicated that you could get several documents on a disk. Do you remember using the term "several documents"?

A Yes, I said I could.

Q You can get 100,000 pages on one four-inch disk, can't you?

A I don't know that you can get 100,000 pages. I know that it is --

Q On a fourteen-inch disk, isn't --

A I know you can get tens of thousands, because I know we have diskettes that have tens to twenties.

Q Is that how you define several, is tens of thousands?

A I was not asked to define several.

[197] Q And you can get tens of thousand of pages on one microfilm, can't you?

A My experience, as the supervisor of a micrographics unit, on a standard Kodak reel of microfilm will range anywhere from 5,000, up to maybe 7,000 documents, eight and a half by eleven on a single roll of microfilm.

Q So it's a lot. Five to 7,000. Okay. Let me move to another area. In a hearing held in this case dealing with obtaining information from State Farm earlier this year, a Karen Ortiz testified. Do you know who Karen Ortiz is from the home office at State Farm?

A I've heard of Karen, yes.

Q She came as State Farm's representative, talked about several things. She testified that at any given time there are always a number of bad faith cases pending against State Farm. Would you accept that as a truthful statement?

A I don't know that I'm in a position to say yes or no to that.

Q Any reason to dispute that from you, sir?

A I have no facts to either concur on dispute how many bad faith lawsuits State Farm may be active in.

Q And she testified that in bad faith cases, similar discovery requests tend to be made, that the [198] attorneys representing the policy holders almost always ask for the manuals, for example. Will you accept that as a truthful statement?

A I would accept as a truthful statement that, through the discovery process, records are asked for, different ones each time, and sometimes, obviously, you're going to focus on some of the same records.

Q Wouldn't you expect in bad faith cases that the State Farm claims manuals are going to be asked for almost every time?

A I don't know that I can sit here and predict what will or will not be asked for. It's impossible to look twenty years down the road and say, "What will plaintiff's counsel ask for as they develop the document lists that they want for a specific lawsuit?"

Q She was testifying from her past experience. Past experience is that in bad faith cases the claims manuals are almost always asked for. Isn't that a fair statement?

A I don't have a lot of past experience in bad faith cases. This is the first time I've been asked to be involved.

Q Yet you're in charge of the records retention program?

A I'm in charge of the records retention [199] program because I was hired to go out research, consult records management, consult agents, and obtain the best information that was out there on records management, not on bad faith lawsuits.

Q Isn't an important part of a document retention program to comply with the laws and rules in the various states where there's litigation pending?

A Not only is it important, it's paramount. We've testified that.

Q So your answer is yes.

A Yes, you must follow the guidelines that are set forward by the regulatory bodies in a given state, yes.

Q And producing documents that are requested lawfully in courts has got to be part of your job, doesn't it?

A No, it's not. I am not involved with going out and searching 10 billion records and providing them over to plaintiff's counsel. That's not within my job description.

Q But you're over the people that do that.

A I'm over the records coordinators, who will facilitate this process, and work with all the individual departments and the thousands of employees who work with these records, and who will, in turn, [200] search and provide those to plaintiff's counsel.

Q So State Farm at least has an obligation, as you understand it, to respond truthfully and accurately to lawful requests for documents in lawsuits?

A State Farm has the obligation to respond to those, and provide all documents that are in existence that are still retained according to the time frames set out by those bodies. If those documents haven't been destroyed because there was no previous requirement to keep those, now they have met this window. If those documents were not destroyed, we will respond back to you, "We have the documents, here they are." If we do not have those documents --

Q Let me suggest something to you, sir. I'm going to have the reporter read back my question, and you see if you can answer it yes or no. Would you do that, please?

A I'll answer your question as truthfully as I can, yes.

MR. CHRISTENSEN: Would you read that back please, Cecilee.

(WHEREUPON the pending question was read by the Reporter.)

THE WITNESS: State Farm is obligated to respond to the discovery requests truthfully, yes.

[201] Q (BY MR. CHRISTENSEN) Okay. Now, you testified earlier, when Mr. Belnap was asking you questions, that there was no ulterior motive by State Farm with this document retention program to get rid of documents, or do away with documents so they wouldn't have to be produced in lawsuits. That's your testimony, isn't it?

A My testimony was that there was no motive to destroy documents or get rid of documents so that they couldn't be produced as evidence in a case, no.

Q Okay, good. I'm holding in my hand a video tape called "Buried Alive." Something you're very familiar with, isn't it?

A Yes, that's the video tape that we purchased from Commonwealth Films to be an educational video with the records management program.

Q And, in fact, in introducing this records management program, it was State Farm's intent that every single State Farm employee see this, wasn't it?

A Our intent was for every employee with the organization to view the video, correct.

Q State Farm added an introduction to the video from Vince Forsino, and then, with that introduction, provided this tape, it's about twenty-three minutes.

A Yes, we asked Vince Forsino to make a [202] statement at the beginning of the video so that employees would understand that this is important to State Farm, and each employee must do their best, and are asked to come forward and retain documents and follow records management guidelines.

Q And it is your sworn testimony that there's nothing on this video tape about destroying and getting rid of records so that courts don't see them; is that your testimony?

A That's a complete misrepresentation of my testimony. I have never been asked a question on that video tape as to whether that video tape did or did not say. I was asked what were the motives, what was the premise, the goals of the program, and I have testified truthfully to that.

Q But this is how the company introduced the program to every employee, is this tape, isn't it?

MR. BELNAP: Your Honor, I'm going to object to this as argumentative. This is a commercial tape that is available --

MR. CHRISTENSEN: And I'm going to object to the speaking objection.

MR. BELNAP: Then let's approach the bench.

MR. CHRISTENSEN: No. There is no reason to.

MR. BELNAP: Do you want me to speak, or do [203] you want me to approach?

MR. CHRISTENSEN: You're making a speech, Paul.

MR. BELNAP: You don't want to listen to it?

MR. CHRISTENSEN: I don't.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. CHRISTENSEN) This was an integral part, and is an integral part of State Farm's document retention program, isn't it?

A That is an educational awareness video that is one of many things that is included in the program. It does not set forth any State Farm procedures, any State Farm guidelines. It is an off-the-shelf video purchased, that's available to the thousands of other organizations. It's advocated by the ARMA association, the Association of Records Managers and Administrators. That's how it was shown to me, at an ARMA meeting.

We thought it created an awareness for records management employees, and we wanted to create that awareness in the State Farm organization. And we purchased it and used it, and we still use it today.

MR. CHRISTENSEN: Would you read the question back to him, please, Cecilee.

(WHEREUPON the pending question was read by [204] the Reporter.)

Q (BY MR. CHRISTENSEN) Isn't the answer yes?

A I believe I testified that it is not an integral part. It is an educational tool, commercial video, used to create awareness.

Q And you acknowledge, do you not, it's not the only message of this video, but a main message is, "Get rid of documents so they won't have to be produced to courts"?

A I totally disagree with that statement. There are sections in there where an employee shreds documents, and he's confronted by his management, and at the end of the video it talks about how that employee is later charged with perjury because he destroyed documents that the retention manual said should be returned. Counsel issued a records hold order, said, "These documents must be retained." This employee did not.

Q Okay, one message was that if you destroy documents after the court has ordered them produced, you can get in trouble. That was one thing, that's what you referred to, right?

A Correct, and it refers that premature destruction is not acceptable.

Q But another message, and I'd submit to you [205] the main message, is, "Get rid of the documents before we have a lawsuit, because they can be used against us." Isn't that a main message of this tape?

A Again, I disagree. I do not feel that that's a main message. And if you look at the literature provided by that company, it explains that this is a video documenting a process that goes through a company, over a period of ten years, things they did right, things they did wrong. Educational videos will show that. You can attend seminars that will teach you what's proper in a work place, what's proper or is not. This video --

Q Do you have in mind what question you're answering, sir?

A Yes, I do. You asked me about the main theme, and I'm trying to describe to you the theme of that video.

Q Do you deny that one of the themes of the video is, "Get rid of documents, every copy, so that they don't become evidence in court"? Do you deny that's a theme at all on this tape?

A I would deny that it's a theme. I would not deny that it's stated in there that documents that are destroyed then later are not used in court. I believe that is stated in that video, yes.

[206] Q So that the jury understands this, after an introduction, the video talks about a hypothetical company named GFX, right?

A That's correct, GFX is the hypothetical company in the video.

Q And GFX -- and it's a make-believe company -- manufactured a product. The video, as I recall, doesn't say what it is. And apparently people are getting hurt with the product, and they sue GFX. Have I represented that accurately?

A I believe that in part of the video, it starts out there where plaintiffs are alleging some injuries from one of GFX's products, and that starts a discovery request for documents.

Q And so the plaintiffs and the court want to see the documents where the GFX engineers designed the product to see if they compromised safety to save money. Isn't that what this make-believe case is about on this tape?

A The make-believe case is about records management. They do ask that documents be provided surrounding, I believe, the manufacture, or maybe even the distribution of that product.

Q Okay. And people that are criticized on the tape, one's name is Charlie; isn't that true?

[207] A Charlie was an individual who retired and took records home with him against company policy, yes.

Q And kept them in some boxes. He was an engineer that helped design the product that was hurting people, wasn't he?

A I don't believe that Charlie's position was stated in the video. It just was referenced that he was an employee of GFX, and records were taken home.

Q And in Charlie's documents that he had in boxes in his garage, which apparently the company had destroyed, it showed that some of the things that were being claimed were true, didn't it?

A No, I believe that's incorrect. What was claimed was that there were some statements in a document, that this was an old document, and for the company to be able to explain what the statements were in that document may be difficult. It didn't say what the actual comments on the document where.

Q In fact, they talk about a smoking gun coming out of Charlie's records, don't they?

A I believe in the video Charlie asked management if this would be considered a smoking gun.

Q And they said, "No, it's more like a nuclear warhead," didn't they?

A Yeah, I believe that that is the exact words [208] they used.

Q And the message of this was, Charlie was a bad person for keeping those records. That's one of the messages, isn't it?

A The message in there is that employees should not take company records which belong to the company home. It would be the equivalent to a bank employee taking home someone's checking account records and storing them in their garage. That would be a violation of the bank. It would be a violation of the privacy of an individual account holder in that bank.

What Charlie did was steal company property after he retired, and took it home. When that happens you run the risk of two things. One, Charlie may clean his garage out six months later, he may have a bonfire, he may burn that. He may have taken all the original records home.

Now the company no longer has the records that it should have had, and should have been able to provide to counsel, that it should have held and provided to the regulators. Now the company is liable for Charlie's negligence.

It also talks about that when Charlie takes these home, if he doesn't destroy them before the company retention period, then now you have an archive [209] of records that are missing, different individual pieces that one person's combined, and those have to individually be reviewed at a cost and expense, and explained to a court and a plaintiff's attorney.

Q Charlie's records proved that, or at least were strong evidence that GFX had done some things in designing that product they shouldn't, and that's why he was criticized for keeping them, because they hurt the company in court, didn't they?

A Again, that's an incorrect statement. Nowhere in the video does it say that that material that Charlie took home says whether the product was good or bad. It says that one gentleman criticized the product, and that his statements now have to be explained to a court, be they good, be they bad.

Q You don't think a document the company attorney called a smoking gun hurt the company's position?

A It didn't say in the video whether it hurt it or not. But obviously they were concerned that now they had to explain a document that they have to determine out the origin of, who was, who composed the document and had that individual, if they're retired or if they're still alive, come back in and explain what was on that document that they created.

[210] Q Big companies would rather not have to explain documents, wouldn't they?

A No, documents support what a company does, and a company needs those to operate, to explain to regulators, to explain to a court of law. What a company doesn't want to do is have to maintain billions and billions of records at an expense to satisfy a plaintiff's request for records ten, twenty years down the road, and incur phenomenal fees that could drive the company out of business, because the company is not in business to store records. The company is in business to provide whatever goods or services they sell.

MR. CHRISTENSEN: May we show the video, Your Honor?

THE COURT: You may.

THE WITNESS: May I slide over so I can see the video?

(WHEREUPON a videotape was played for the Jury, a transcription of which follows.)

"State Farm produces and maintains millions of electronic and paper records each year. We need this information to perform our day-to-day operations, as well as to satisfy legal requirements.

"These records must be stored efficiently so they can be located in a timely manner. Once records [211] are no longer required, they must be destroyed following State Farm's records management policies. Cost to store records can be staggering if unnecessary records are not disposed of on a regular basis.

"The video you are about to see contains a very important message. A successful records management program requires action and support from every employee within the organization. At State Farm we recognize the importance of this issue, and we ask you to do your part to ensure a sound records management program.

"Organizations run on records, memos, letters, reports, plans, financial records, designs, research, contracts, on microfilm, computer memories, diskettes, tapes, but especially on paper. Tons of paper, every day. Over 70 billion documents a year. An estimated 570 billion documents are currently in storage in the United States alone.

"Managing the retention of this landslide of documents, determining what must be saved, and for how long, scheduling what can be destroyed and when, tracking records so they can be found when needed, during year-in, year-out operations, and under, can make a difference between your staying on top of the heap, or getting buried alive.

"On March 18th, GFX, Limited was notified of [212] a lawsuit. Plaintiffs were seeking to recover damages for injuries allegedly caused by GFX products. Claims totalled

millions of dollars. In a matter of days the discovery process began. All records related to the charges had to be located and turned over to the plaintiffs.

"Hundreds of thousands of documents saw the light of day, many for the first time in years. Like an archeological dig, the document search unearthed an entire organizational culture, including the way document retention practice sometimes failed to match document retention policy.

"Ten years earlier, sweeping changes had been made in the records management at GFX. All company records were surveyed by a team that included a vice president, an operations manager, a lawyer, a records manager, and a financial officer. They issued a written document retention policy.

"Series of documents were to be retained according to a timetable based on operational needs, legal requirements, or long-term archival plans. The timetable stipulated how long every document series should be kept within a department, when records were to be sent to a central storage facility, and when and how they should be routinely destroyed.

[213] "Records such as routine correspondence, phone call notes, drafts, sketches, were not to be classified for retention. Some documents were not to be retained beyond the day they were written. The program created a uniform filing system with a central catalog. Documents were segregated in categories, each with a date for systematic destruction.

"A records manager ran the program and took charge of an annual compliance audit of all departments, with a full cooperation of senior management. Throughout the year employees were held responsible for seeing that complete and accurate records were retained as required, identified, stored, protected and appropriately disposed of.

"From the start of the program ten years ago, the objective was to clean out unnecessary records, free up costly space for more productive purposes, and make retention and retrieval more efficient. But discovery revealed some people had different ideas.

"The biography of just one letter shows how too many exceptions happened. August 16th, 1982, to Mr. James S. Smith, sales manager, Accutime Corporation. Subject, cutback in a component cost. Signed by John G. Phillips, manager of purchasing.

"The timetable said that routine vendor [214] correspondence should be separated in series marked to be destroyed without review after twelve months. But Phillips wanted to hang onto these records. He marked the file copy, 'Review one year.'

"One year later, Phillips reviewed them and decided to keep correspondence with some key vendors for yet another year. His reason? 'Save these, just in case.' The Smith/Phillips letter was one of the saves that stayed in the department.

"On the next year's document purge date, two-year-old vendor correspondence was scheduled to be destroyed wholesale, but Phillips again culled out some correspondence. This time he filed it with related vendor contracts. 'These letters aren't contracts. But I'll know where to find them.'

"Then Phillips was transferred. Two years later, a secretary boxed vendor contracts to go to records storage in compliance with the retention policy. File contents were not purged. Boxes were identified by a project and contract number. No mention of correspondence. The files went into the dark for the specified three years. At this point, if someone had needed the vendor letters, nobody could have found them.

"At thirty-four months, records storage sent a form to check whether that series of contract records [215] should be destroyed on schedule. Not sure exactly what was in them, the new office manager checked, 'Save one year.' Her reason? 'Just in case.'

"The Smith/Phillips letter lived on unknown, unseen, uncalled for, just in case. Now that letter, because of its heading, related to component cost reduction, has to be copied, dated, and reviewed by lawyers and turned over to the plaintiff's attorney. Each of these steps cost time and money.

"'That's only one document. We're finding thousands like it.'

"The discovery process continued. Week after week they unearthed the results of hundreds of individual decisions to save documents that should have been systematically destroyed. Out of desk drawers, file cabinets, closets, storage shelves, came things people didn't even think of as documents. Personal files, appointment books, Polaroid snapshots, notes written on envelopes, on backs of meeting agendas, and in the margins of yellow news clips, computer disks, dictation tapes, video programs.

"One person threw out originals, but kept her own FYI copies. The unofficial prize went to some handwritten notes and numbers on a Chinese takeout menu that had been filed, gravy stains and all, after a [216] long-forgotten late-night meeting.

"This one case revealed only the tip of the iceberg. How many more documents erroneously and needlessly retained were hidden beneath the surface? At what cost per foot for storage alone? How many people, how many hours to locate and process them?

"Buried in an avalanche of excess records, GFX personnel were learning some costly lessons about document hoarding. Don't be a just-in-case document saver. Retain and destroy systematically. Segregate records for retention according to retention timetable.

"Destroy series wholesale as soon as retention is not required. Retain only for vital operational, legal, or archival needs. Do not retain unscheduled temporary materials, like drafts, reminder notes, work sheets, or extra copies.

"The lawsuit demonstrated that systematized retention would work like clockwork in most departments where records moved on schedule out to central storage. (Inaudible) for each storage box.

"Recently the system updated to bar coding. The records center was designed to protect records from hazards such as fire, moisture, and pests, theft, sabotage, or espionage, disasters like earthquakes, floods, storms or explosions, and unauthorized use, [217] disclosure, or destruction.

"Computer tapes, film, microfiche, and paper records were protected in climate-controlled rooms. Records converted to film, microfilm, or microfiche to save space were grouped by retention category. At a secure offsite facility backup copies of vital records were preserved to help the organization get up and running again if a disaster wiped out the originals.

"Document transfer forms control the flow of records into a central file, and assured they were checked out only by authorized personnel. The system reduced the volume of documents stored, and speeded search time, wherever people went by the book.

"But some people, for various reasons, developed gorilla retention systems of their own. As each informal non-conforming cache of files was uncovered, you could almost hear the voices of the people who had originally saved them.

"'I'm not going to be hung up sending down to central storage every time I need one of our old files.'

"'I've got a right to keep my own sales diaries here at my finger tips.'

"'Before we destroy these reports make copies for my file. Just in case.'

"'Charlie's files? Stick them in the [218] closet.'

"Out of a coat closet came two boxes of old files identified only as 'Charlie.'

"'Oh, I forgot this stuff. Charlie retired last year, I just haven't had time to go through these files and --'

"The minute someone leaves, you're supposed to examine that persons files to determine what should be reassigned to another employee or sent to central storage or destroyed.

"'Just look at this heap.'

"'This is nothing. You should see at his house. I was there once. I couldn't believe how much junk from the office he accumulated. But that's Charlie. I mean he saves everything. He's a pack rat.'

"Later in a deposition another employee made a similar comment to the plaintiff's attorney. The very next day the attorney knocked on Charlie's front door.

"'I've got a few things over here in the corner.'

"Sitting in Charlie's garage was a one-man archive that had evaded the regular purges of departmental files.

"'I had no idea they could just come into my house and cart away my personal property.'

[219] "'They didn't. These are not your personal property. They're documents about GFX, belonging to GFX. They should have been retained or destroyed at GFX. Why on earth did you keep all this stuff?'

"'I didn't want all this valuable information to get turned into confetti. For example, at the beginning there was a lot of debate about the basic dike concept. A lot of memos went back and forth, pros, cons, it's too expensive, this won't work. Listen to what this guy says --'

"'I read it. So did the plaintiff's lawyer. You know what this guy meant to say, I know what he meant, but how will this sound to a jury? It's loaded. All it needs is a trigger.'

"'You think they'll try to make this into a smoking gun?'

"'Smoking gun? More like a nuclear warhead.'

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"One of the problems with improperly retained records, with the archive in Charlie's garage, is they may preserve a trail of ambiguous language, opinions, criticisms, remarks, and even wise cracks that can turn to evidence at the expense of the organization.

"Documents like that should not have been created in the first place. Your wording should accurately reflect the organization's concerns with [220] ethics, safety, compliance with laws, and proper practices. A few careless sentences can turn into legal time bombs.

"One of the product development managers, Ann Stewart, had kept yearly files, three-ring binders containing every memo, report, plan, study, and design, going back more than ten years. She felt she had good reasons.

"'We need to have a history of the entire life span of a project as important as this. Well, that's because --"

"When the problem files were examined during discovery, some things were clearly missing. For example, comments about alternate designs that had been rejected.

"'Why were these particular documents missing?'

"'It didn't sound good. Some hot heads would say things like, "This is a killer," or, "We'll nickel and dime this." Nay sayers' comments bad mouthed the entire project.'

"Defusing the files by getting rid of bad documents and keeping only good ones can blow up in your face.

"Some people would call what Ann did quality [221] control, eliminating gaps in the record. But gaps in the record are as obvious as a few missing front teeth.

"When a court is informed that pages are missing from bound ledgers, (inaudible) missing from a storage box, the gaps may do more damage than bad documents would. Document retention programs are not to be used for so-called quality control. Do not attempt to yank bad documents and keep only good ones. Retaining departmental control chrono files may be inadvisable over the long-term.

"Document retention relies on regularly-scheduled purges of the working files. The purge date comes at least once a year, like spring cleaning. Retained records not kept in the department are transferred to the records center for storage. Documents that don't have to be retained are collected for destruction.

"Destruction should be consistent, not sporadic. It should occur at regularly-scheduled intervals. Series of files should be destroyed in their entirety, not selectively by culling individual documents.

"Sensitive documents should not be thrown whole or in reconstructable pieces into the dumpsters. Sensitive or classified documents should be destroyed by [222] shredding, pulverizing, burning.

"'Memo to all department managers from A. W. Black, corporate counsel, subject, G-Line Document Retention Requirements. Date, today. Oh, and mark this priority. Paragraph.

"'GFX has been sued by plaintiffs alleging injuries caused by a G-line product. In the course of preparing for trial, GFX, as defendant, is required to turn over to the plaintiffs information and documents in a process called discovery. Paragraph.

"'Destruction of any relevant materials in accordance with a normal document retention program should immediately be suspended. If you or your (inaudible) you should not dispose of them until the court has expressly permitted destruction. We will advise you in writing when that occurs. Failure to comply with these obligations may subject both the company and you to sanctions, fines, or other penalties. Paragraph.

"'The categories of documents currently called for by the plaintiff's lawyers concern product development, component costs, saved --'

"The document retention program included a stop button procedure, starting with the written notice of a discovery process to every department head. [223] Despite this formal procedure, in one department document destruction had not been stopped.

"One file category was missing the most recent three years. The plaintiff's lawyers smelled a possible smoking gun. What was found, instead, was a smoking shredder. By the time the destruction of documents was brought to a halt, many records on the list had been shredded. Had the department received the notification?

"'These three years of records were never transferred to central records. As of the schedule, we were never required to retain them. I figured I'd save us a lot of trouble just by doing what the document retention policy says, which is to get rid of them.'

"'But that's not what the document retention policy says. In the event of an investigation or lawsuit, it says, in effect, stop shredding, start saving.'

"Another department used an indexing system that made it all but impossible to find requested documents. Like hunting for a needle in a haystack. In fact, that was the idea.

"'Some of these letters include customer complaints, stuff like that.' They figured they could cause problems. So they kind of buried them.

[224] "Sanitized, shredded, or buried, missing documents may have to be explained to investigators, a regulatory agency, a grand jury, a trial jury, or a judge.

"This was not a bona fide document retention and destruction policy, but a sham designed to mask the purpose of eliminating documents, which might be detrimental.

"In GFX the judge rejected the document retention policy as a justification for failing to produce documents 'GFX must (inaudible).' The worst was yet to come.

"Before the case got rolling, department manager Henry Vaughn received a phone call from a friend in another division. The caller warned that legal action was pending. Vaughn instructed his assistant to get rid of all files that might be pertinent to the case. 'I just want them destroyed, and destroyed quickly.'

"'What?'

"Monday morning a discovery notice from the general counsel's office landed on Vaughn's desk. He took immediate action. But it was not to stop the disposal of records.

"'The case is on. But this discovery does [225] not have to change our document destruction practices.'

"Later discovery shifted from what was in the department's files to what was not. When had documents been destroyed? And why?

"'We were cleaning out the files to make more space. Normal procedure. I'm sorry, but they're gone.'

"But documents, like cats, seems to have nine lives. Duplicates of some of the destroyed records appeared in other people's files. Others were discovered still in word processor memory and on diskettes. And they could not erase the memories of the people who typed, duplicated, routed, or read the documents.

"In depositions under oath employees, and even best friends, testified that Henry Vaughn had ordered the destruction of documents. One month after the conclusion of the case, he was charged with destruction of evidence, and perjury.

"The case they couldn't lose became one they couldn't win. A high price for deviation from document retention policy by a few people and departments. And the price went beyond the cost of a single lost case.

"There was the operating costs of years of records inefficiency, the handling cost of storing and retrieving excess records, the legal cost of examining [226] thousands of superfluous documents.

"Some people may have seen the document retention policy as making a mountain out of a molehill. To them, shortcutting the policy looked like an easy way out. In reality, it was a way to get in deeper, for some it was a way to be buried alive."

Q (BY MR. CHRISTENSEN) Mr. Cochran, is it still your testimony that State Farm's new records retention program, that this tape introduced to employees, has nothing to do with keeping documents from becoming evidence in court?

A That tape did not introduce State Farm's records management program. The records management program is documented in the records management manual. That was an awareness and an educational video put out by an outside vendor.

Q That State Farm adopted to show to every employee.

A We purchased the video, versus making our own video, and showed it to employees, yes.

Q Doesn't it say, "Our goal is for every State Farm employee to view this video"?

A We previously stated that, yes, that we want every employee, and we want new employees to see the video.

[227] Q Is it still your testimony that one of the key messages of this video is not, "Get rid of all the copies before the lawsuit, so we don't have to produce them"?

A It's still my testimony, and it's still the truth, that there are many messages in that video. The main video message, I'm sorry, is to get across to employees the importance of a proper records management program. It shows negative sequences, positive sequences. The jury was able to see all those as they watched that twenty-three minute video.

Q One of the messages is, "Get rid of the documents before there's a lawsuit." Isn't it?

A The message is to retain documents according to the legal requirements and the business requirements, and then destroy those documents only when there is no other requirement to maintain that information.

Q Mr. Cochran, shouldn't a primary purpose of a company's record-keeping program be to preserve the truth?

A The primary goal is to preserve records, all records that we have. And the truth contained in those records, yes.

Q Ultimately, shouldn't a corporation's goal, and particularly an insurance company that's involved in [228] a business which is frequently referred to as a public trust, shouldn't a primary goal of its document retention program be for the truth to be preserved?

A Yes, you want the truth to be preserved in the records that are stated there.

Q Is it an appropriate message to criticize, in this tape, Charlie, in the make believe case, because the, what appears to be the most significant documents relating to the issues came out through his retention?

MR. BELNAP: Your Honor, I'm going to object. This was a commercially-prepared video, as we discussed at the bench, and I think that it's without foundation and an improper question.

THE COURT: Overruled.

THE WITNESS: I'm sorry, can you repeat the question?

Q (BY MR. CHRISTENSEN) Yes. Regardless of whether it was prepared or State Farm or not, this is a message State Farm wanted every employee to get, right?

A We wanted every employee to understand that records are State Farm's property, just like a bank's records are a bank's property, and employees are not to take those records home. They must be retained in the organization.

Q So that the organization can destroy them, [229] and they'll be gone when the organization doesn't want them to exist any more, right?

A Absolutely not. If you're going to issue a discovery request for me, and I'm going to provide you with the records, I must have the records in my possession. I must know --

Q Excuse me, I interrupted you.

A I was going to say, the records must be in the organization's possession. If I'm going to answer your interrogatories for discovery requests and documents, the documents must be maintained within the organization, within the records management program, and then we can answer your request.

Q Isn't it true that, as years go by, people's memories fade?

A I assume that people forget things all the time, I imagine.

Q Isn't one reason for retaining documents and records is that documents sometimes are much more accurate than people's memories in revealing what really happened?

A Documents are retained because they are, you're obligated to retain those. Departments of insurance in Utah, Illinois, federal government, require you to maintain them.

[230] The business need, the reason the companies maintain them beyond the legal requirement that a state sets forth, is so that you will be able to go back and answer questions from 65 million policy holders about their records or about their insurance, yes.

Q And isn't it often the case that a document written at the time, before there was a lawsuit, before anyone had a motive to want to say something otherwise, a document written, then, many times is the best way to show the truth?

A You're an attorney, you probably know more than I what is considered best evidence. A document that was written before a legal action and was retained and is provided to counsel, is what that document says it is.

Q And isn't it a problem -- Strike that. Are you aware that some of the most significant documents in this case have come from Charlies? Samantha Bird, John Crowe, Bruce Davis, people like that?

A I have been made aware, out of the thousands of documents that we have provided to plaintiff's counsel, you have also obtained additional documents from disgruntled employees who are no longer with the company. You've obtained those from plaintiffs' networks of attorneys who maintain documents outside the [231] scope of State Farm and circulate those country wide, so that later those documents can be brought about and employees who are no longer with the company, are not even alive, cannot testify about those documents. And those documents may be misrepresented, or paraded in however they want to be used in front of a jury.

Q Okay, you've said a couple of things which we've heard before, and obviously somebody has suggested you just make that speech, haven't they?

A I'm sorry, suggested I make what speech?

Q The speech you just made.

A The information that I just relayed was from my personal knowledge. We referenced letters that we sent to outside defense counsel.

Q And I'm going to get to that in a minute --

A Those were -- I would just like to state that I am personally aware that when those letters were sent to attorneys, immediately they showed up, from an attorney, I believe they may have been on the west coast, in cases all throughout the country. So that's my basis for this network of passing documents around amongst a series of plaintiff's attorneys.

Q Well, I'm going to get to those in just a minute. Before we do, in this case the term "plaintiff's attorney" has been used over and over again [232] as a very derogatory term by State Farm people. Are you aware that every attorney sitting in this room has represented both plaintiffs and defendants during their career?

A I'm not aware of who's represented who in the past, no.

Q Are you someone that judges everybody based on their race?

A Absolutely not. I have not made any judgments on anyone.

Q How about judging someone on their sex? Do you put everybody that's a woman or a man in some stereotype?

A Absolutely not.

Q Do you put every attorney who represents a plaintiff in a stereotype?

A Absolutely not.

Q Do you believe that only wealthy corporations should have lawyers?

A Absolutely not. I figure that the justice system is fair, and that every person, whether they can afford it or not, should be allowed to have an attorney.

Q Do you have a problem with plaintiffs like Mrs. Campbell having legal counsel?

A Why would I have trouble with that? [233] Absolutely not.

Q Now, getting back to my question, you do criticize the Samantha Birds of the world who come forward with documents that shed light on issues that are in question, don't you?

MR. BELNAP: Objection, misstates his testimony.

THE COURT: I think he can ask the question. Overruled.

THE WITNESS: I'm sorry, can the question be repeated?

Q (BY MR. CHRISTENSEN) Yes. You criticize people like Samantha Bird, as does your video, for saving documents that help bring the truth to light, don't you?

MR. BELNAP: Objection, Your Honor, it's argumentative and assumes facts not in evidence, and misstates his testimony.

THE COURT: Overruled.

THE WITNESS: I am not criticizing anyone. Current employee, former employee. What I am advocating is that

employees should follow the law. That they should retain the records that regulatory bodies say that we should retain, and they should also follow the guidelines that the employer sets out for them to retain [234] records.

Q Now, from Mr. Crowe we obtained a very important document State Farm apparently has destroyed, the PP&R manual, which has been discussed at length. Are you aware we now have this?

A I have not seen that document before, no.

Q Now that we have it, under your document retention program, what will State Farm do with it when this case is over?

A Is the record in State Farm's possession? You indicated that you have it. You didn't indicate that State Farm has that record.

Q They've got everything now we've got. I think they have more copies of this than they want. What will you do with it, now that State Farm has it?

A Any record that we have is maintained according to retention schedule that is established for legal purposes, for business purposes, and also subject to those hold orders that we have out there.

Q Well, your document retention program suggests this should be destroyed. It's a '79 document, isn't it?

A If that was a 1979 document, let's say it had a legal requirement -- A lot of personnel-related information, that is a three-year requirement from the [235] federal government. If that record was destroyed in 1982 and State Farm answered your interrogatories that they did not have that document, I do not see anything wrong with that. If they had destroyed a document six years before you requested it, no one can be obligated to keep a record forever, just in case that it may be asked for twenty years down the road.

Q My question, sir, is this is a document, an example of a document that would be commonly asked for in bad faith cases. Now that State Farm has it, courtesy of Mr. Crowe, will you destroy it?

MR. BELNAP: Your Honor, I'm going to object to the question as it's counsel's testimony on the preface of that, and move to strike the first part of your question.

THE COURT: Reframe the question.

Q (BY MR. CHRISTENSEN) Now that State Farm has this document, will it be destroyed?

A It will be retained according to the retention schedules that the company currently has. Right now we are currently in the process of developing the retention schedule for human resources type records, and at that time, once those records are scheduled, then that document will be retained as described by the company guidelines.

[236] THE COURT: Mr. Christensen, I think you're entitled to an answer to that question in terms of the policy as this person understands it. So you can persist in that question until he answers that question. And I'd instruct you to answer the question pursuant to the policies.

Q (BY MR. CHRISTENSEN) What will you do with the document, sir?

A I stated previously, the human resources retention schedule, we've developed these retention schedules over a period of time, underwriting, claims, management, planning and information, other areas. The human resources schedule has not been added to my records management manual.

So you're asking me to answer a question that I do not even have the legal results back from my corporate law department to tell me how long human resources records need to be kept in any state. I have not contacted the human resources department and asked them how long State Farm's business need for that record is. So it's impossible to sit here and speculate.

That would have been like going back in time five years ago and saying, how long would I put on these schedules today? That is a cumulative process, it's been going on for two years. That schedule will be [237] released in the next six months.

If that was out there today I would read it, and I would tell you, and I would answer your question very quickly like you want, but I cannot do that. Those retention requirements do not exist.

Q Mr. Cochran, have you been told not to make any commitment on the record to keep documents like this?

A Absolutely not. I have not been instructed to answer anything except in the complete and hundred percent most truth that I can.

Q Let me try again. As best you know, once this case is over, will this document be retained in some sort of a historical document file by State Farm, or will it be destroyed?

A The answer to that question at this point is it's impossible to answer, because those guidelines have not been established.

Q Will State Farm, while this case is pending, represent in other lawsuits that this document doesn't exist?

A Any record that we know exists, we are obligated to provide on an interrogatory or discovery request, and we search and we provide every record that we are asked for if it is in existence and possession of [238] the company.

Q All right, let me move on. Time is quickly running. You discovered, after you came up with the program -- And by the way, before '93 there was massive destruction that went on of old claim manuals, wasn't there?

A Before 1993, each department within the organization, accounting, underwriting, personnel, claims, had their own retention time frames, and they followed those. My goal was to come in and develop a company-wide, consistent program that met all legal obligations.

Q Okay, my question is, before '93, there had been massive destruction of the old State Farm claim manuals, hadn't there?

A Before 1993, claims manuals had been destroyed, along with billions of other records, yes.

Q Including, I believe we had a Mr. Comella, there's testimony that he testified in 1988 or '89 in a case in another part of the country, Schlossberg, I think it was, that there were historical files kept on each manual, that showed each revision. You're aware those are gone.

A I'm not aware of what each individual department does or does not have within a specific [239] records series. I know that our current retention for claim manuals, as you're discussing it, is ten years. That is five years longer than the department of insurance in the state of Illinois requires.

Q You're aware that State Farm's position in this case is that claim manuals from some time frames that have been requested in this case don't exist. Is that consistent with what you know about their document retention program?

A I know that through the course of regular business, claim manuals, along with other documents, have been destroyed in the past, and they are no longer available when you request those documents, yes.

Q There's not one single copy kept of some of those manuals; isn't that true?

A The original is preserved for the time frame established for it, which today is currently ten years.

Q There's not one single copy of some of those manuals kept anywhere in this huge organization; isn't that true?

A What manuals are you referencing, sir?

Q Oh, some of the early versions, for example, of the State Farm Auto Manual.

Let me ask this, maybe I can get to it quicker. It's been represented that some of the manuals [240] that we've

requested, for example, the auto manual from the same year as the Excess Liability Handbook, 1972, doesn't exist, anywhere, not one copy. Is that consistent with your understanding?

MR. BELNAP: Your Honor, I'm going to object to that question. That was never asked of us in discovery requests. And I'd like to approach the bench on that point, if further explanation is needed.

MR. CHRISTENSEN: Well, let me pick another example, if that's a problem.

Q (BY MR. CHRISTENSEN) Isn't it true that State Farm has not kept historical copies of many of the old claims manuals? Not one copy.

A It's true that manuals were destroyed in the past according to their retention time frames, and they're no longer available as a part of the regular course of business.

Q Every copy.

A Copies are destroyed immediately, as soon as a revision is made. The copy in the field, you do not want to have a claims adjuster operating off of an old, obsolete manual. You want the current procedures in front of them.

Back at the home office a corporate, you retain a manual for the retention period established. [241] Today, that retention period is ten years, and we will have claims manuals that you're referring to ten years after they are removed, they are determined to be obsolete.

Q Now, you, once you got into your program, discovered a big hole in the document destruction, and let me suggest to you what that hole was. That's attorneys all over the country that have been hired by State Farm in lawsuits that may have old manuals. You wanted to make sure those were destroyed, didn't you?

A Again, that's incorrect. We wanted to make sure that original material was returned to us, and as we stated earlier, any non-record copies destroyed.

Q In July of 1995, you sent a letter to over 2,000 law firms, wasn't it?

A That's correct, that went out to 2,000-plus defense counsel.

Q Telling them that if they had things, and one of the things mentioned is manuals, from State Farm in cases that were closed, that they were either to immediately return those to State Farm, or destroy them. Isn't that true?

A That memo, or I'm sorry, that letter stipulates original manuals, materials, sent to us. Copies, destroy. It didn't make sense to send those in.

[242] That letter was sent out, as we stated earlier, for two reasons. Counsel had requested relief from the burdensome storage costs from all the lawsuits that they'd represented State Farm. They wanted to make sure we were getting our material back. Secondly, we wanted to make sure that original material was returned to State Farm and retained accordingly.

Q It's a storage burden for a law firm to keep something like this?

A If a law firm has been representing State Farm, as some of them have, back into the 1930s, they will have hundreds, thousands of case files that may be three feet, five feet, take up several file cabinets. It is a storage burden for these attorneys, yes.

Q I'm talking about old manuals. That's on your list, isn't it?

A I believe that manuals copies are referenced, along with a list of other items.

Q So 1995 you expanded your document destruction program to law firms around the country that had done work for State Farm?

A In 1995, we incorporated into our records management program the records that these attorneys had out there in the offices, and brought those back into the organization.

[243] Q And at the very time you were instructing lawyers around the country to destroy, among other things, old manuals, those were subject to document production requests in bad faith cases around the country, weren't they?

A We advised them to destroy non-record copies, as the Illinois Department of Insurance specified. We asked them to send back in any original materials.

Q Is this a non-record copy?

A I would say that the copy you have, if State Farm has the original or another version of that, your record is a non-record. State Farm now has the original.

Q It's a non-record. Is it a non-entity? Does it exist?

A It exists, we can see it in front of us.

MR. CHRISTENSEN: All right, thank you.

THE COURT: I think we'd better complete our examination of this witness today. Let's proceed. How long do you think you've got, Mr. Belnap?

MR. BELNAP: Five, ten minutes.

THE COURT: Let's go.

REDIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Cochran, are you aware, with respect to [244] the PP&R book, that this document was available in, and used in the Singh case in 1993?

MR. HUMPHERYS: Objection, Your Honor, leading.

MR. BELNAP: Let me rephrase it.

Q (BY MR. BELNAP) Are you aware if this document was available and used in 1993?

A No, I'm not aware of that.

Q Are you aware, Mr. Cochran, that State Farm has produced to the plaintiffs in this case the 1987 revision of this document, and the 1992 revision?

A I'm not aware of the specific documents out of the thousands that you have provided them, no.

MR. CHRISTENSEN: Your Honor, I'm going to object to leading the witness. It's obvious this witness doesn't know.

THE COURT: I'll allow the answers to stand, and you can proceed.

Q (BY MR. BELNAP) Mr. Cochran, with respect to operations in the field claim offices, where claims handlers are using manuals, you indicated that they should be using the current materials. Is that what you said?

A Absolutely. You always want the current material in front of them.

[245] Q I'm holding the retention schedule that's been produced to the plaintiffs in this case on the automobile matters, and ask you if you can refer -- Are these pages numbered?

A I do not believe they are.

Q Let me see if there's one in the top left-hand corner. It does not appear to be numbered. But I'll ask you to refer to a page on the retention schedule that counsel has, and I'm referring you to the bottom of this page, and ask you to read what that references.

A It says, "Claims procedure manual original page history. Retention time frame current year plus ten."

Q What does that refer to under the current program, Mr. Cochran?

A Under the current program, we retained the original claim manual back at home office. It stipulates here that the original files are maintained at the home office.

What that means to employees in the field is, when we send out 3,000 copies of the manual, destroy the old version, recycle it, put in the new version so you have the current procedures, with the assurance that back at home office we are going to maintain that for [246] ten years to satisfy all legal requirements.

Q What does that say?

A The definition?

Q Yes.

A Under claims procedure manuals, original page history, it says, "Original page history and documentation for superseded auto claims manual pages covering guidelines and procedures, includes processing guide and claims manuals maintained at home office."

Q Mr. Cochran, are you aware that in this case, which was filed in 1989, that a complete -- Do you know whether or not a complete set of manuals was produced when requested in 1989?

A I believe that a current complete set of claims procedure manuals was provided in the discovery requests, yes.

Q And do you know if counsel has the manuals that were in effect at the time of the accident in this case?

MR. HUMPHERYS: Your Honor, we're just leading all over the place.

THE COURT: Sustained.

MR. BELNAP: I'm asking him -- Your Honor, I don't know how to ask that question without asking it, and then proceeding, if he knows. I can rephrase it, [247] but I don't know how.

THE COURT: Well, rephrase it so you lay a foundation that he has any knowledge at all, and if he has some knowledge, then you can ask the question.

MR. BELNAP: That was the purpose of the question, but let me try it again.

Q (BY MR. BELNAP) Do you know, Mr. Cochran, if counsel in this case have the manuals that were in effect at the time of the accident?

A Yes, I believe counsel does have some of the manuals dating back into the 1970s.

Q And I don't think counsel will dispute this, but let me ask you the question. Do you know if they have the auto claims manual and the Claims Superintendent's Manual that was in effect at the time of the accident?

MR. CHRISTENSEN: Your Honor, I'm going to object to this. First of all, he doesn't know.

MR. BELNAP: That's what I'm asking him, Judge.

MR. CHRISTENSEN: If he's going to claim he knows the discovery history of this case, he's going to have to answer for a lot of things, we're going to be here for a while. I don't think he knows.

THE COURT: Well, that's the question [248] Mr. Belnap asked him, so let's get an answer. Overruled.

Q (BY MR. BELNAP) If you don't know, that's fine. But I don't think they'll dispute it. Do you know?

MR. CHRISTENSEN: Could we approach the bench, Your Honor?

THE COURT: You may, sure.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. BELNAP) Mr. Cochran, now that you've been in this position that you're in for approximately three years, if State Farm, as a company, did not throw away any documents, any manuals and documents, can you give us some idea of how many documents you would have to be keeping in all of the different departments that somebody might be interested in, in fifteen or twenty years?

A We stated earlier that we currently have 10.9 billion records, following the prescribed retention requirements out there. Last year alone we created two and a half billion. If we were never allowed to destroy records, and were asked to preserve every record that the organization --

You could just see exponentially how that [249] would increase. And the cost, and the inefficiencies trying to provide documents when they're requested. It would be impossible. It just cannot be done.

MR. BELNAP: Thank you.

MR. CHRISTENSEN: No further questions.

MR. BELNAP: Thank you.

THE COURT: You may step down, Mr. Cochran.

Ladies and gentlemen, I think it's time to recess for the week. We've completed week number seven; is that correct? Next week we're going to hold court on Tuesday, Thursday, and Friday. Remember, that Wednesday is a holiday, and Monday is our normal day off.

I'm going to admonish you at this time, as we recess for the weekend, not to discuss the case with anyone, not to allow anyone to communicate with you about the case, and you're not to communicate with anyone about the case, not to form any opinions about the case, and not to begin your deliberations.

Since we are recessing for the weekend, I'll admonish you not to read the local newspapers, not listen to any television or radio broadcasts that cover this case. And should you happen to come upon such a broadcast, I'll admonish you to leave the room and turn the broadcast off.

Thank you for your attention.

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EXCERPTS OF TRIAL TESTIMONY OF JOHN CROWE, JUNE 18 & 19, 1996

[Vol. 9, R. 10264, commencing at p. 101]

* * *

JOHN W. CROWE called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Would you state your name, please.

A John W. Crowe.

Q Are you a former employee of State Farm?

A Yes, I am.

Q Would you outline your background while you were employed with State Farm, briefly, the positions you held, and the time frames that you held those positions?

A Okay, I started with State Farm in 1965 as a claim representative trainee with the auto company, I received several promotions in the claim ranks up through, oh, probably 1972.

In 1976 I transferred to State Farm Fire and Casualty Company, 1979 I was promoted to a claims superintendent in Annendale, Virginia. In 1986 I was promoted to a divisional claims superintendent in Salt Lake City, and then in 1989-90 I had two of the darkest years of my life and I had some serious, real serious financial and marital problems, and things felt apart, and I was demoted in February of 1990, and on December 6th, 1990 I was terminated with State Farm.

Q Okay. So you spent the first few years with State Farm Auto?

A Yes.

Q In claims? And you then worked with the fire company for a number of years. In 1987, were you the divisional claims superintendent in Utah for both fire and auto?

A I was for the entire state for fire, and for [103] auto it was the northern Utah auto operation.

Q During that year, where did your pay checks come from?

A During that particular year they were issued by State Farm Mutual Automobile Insurance Company.

Q So you were a State Farm Auto employee, but you were over the fire company for the whole state.

A That's correct.

Q Would that be this level of the company, right here? Divisional claims superintendent?

A That's correct.

* * *

Q Is it well known by people that work at State Farm that the auto company owns the fire company?

A That's correct.

[104] Q Is it well known at State Farm that the auto company controls the fire company?

MR. BELNAP: Your Honor, leading and calls for a conclusion, and also subject to a prior ruling of this court.

THE COURT: I'll sustain it as leading.

Q (BY MR. CHRISTENSEN) Based on what you observed in your years at State Farm, working for both auto and fire, are you able to state whether you observed any evidence of control exercised by the auto company over the fire company?

MR. BELNAP: Your Honor -- Excuse me, Mr. Crowe. That question is overly broad and without foundation, and also calls for a conclusion.

THE COURT: I'll allow him to answer it, and then I assume that you'll get into details about it.

MR. CHRISTENSEN: Okay.

MR. BELNAP: May I voir dire after he answers yes or no, Your Honor?

THE COURT: You may.

* * *

[105] * * *

Q (BY MR. CHRISTENSEN) Yes. During the years you worked at State Farm, did you observe any evidence indicating one way or another whether the auto company exercised control over the fire company?

A Over the fire company and the other company, yes. Yes.

THE COURT: All right, you may voir dire.

MR. BELNAP: Mr. Crowe, from 1979 through 1990, with the exception of approximately nine or ten months, you were with the fire company; is that correct?

THE WITNESS: That's correct.

MR. BELNAP: During that time, Mr. Crowe, did the fire company have its own training schools?

THE WITNESS: Yes, they did.

MR. BELNAP: Did they have their own office, separate than the auto company, in Bloomington?

THE WITNESS: Yes, they did.

MR. BELNAP: Did they have their own general claims department, separate from the auto claims department?

[106] THE WITNESS: Yes, they did.

MR. BELNAP: Did you report to a division manager that was over fire in the region that you were in?

THE WITNESS: The division manager in the region was over both auto and fire.

MR. BELNAP: Okay. Did you have employees working under you that were fire employees?

THE WITNESS: Yes, I did.

MR. BELNAP: Except for the nine or ten months that you worked for the auto company, while you were with the fire company, did you supervise auto adjusters?

THE WITNESS: No, I did not.

MR. BELNAP: Did the fire company, during the years that you were with them, '79 through '90, with the exception of nine months, have its own claims materials, known aspiration guides?

THE WITNESS: Yes, they did.

MR. BELNAP: Did the auto company have its own separate manuals, known as claim manuals?

THE WITNESS: They had separate manuals.

MR. BELNAP: Did you get your pay checks from the fire company when you were working for them, with the exception of that nine months?

[107] THE WITNESS: Yes, I did.

MR. CHRISTENSEN: Your Honor, I think this is cross exam. This isn't voir dire.

THE COURT: I agree. This doesn't go to foundation, it goes to cross.

MR. BELNAP: I would renew my objection on foundation, Your Honor.

THE COURT: Overruled.

Q (BY MR. CHRISTENSEN) Mr. Crowe, you did work for the auto company for how many years when you first started at State Farm?

A When I first started, it was approximately eleven years. Eleven to twelve years.

Q That was with the auto company?

A That's correct.

Q Was your claims handling training done through the auto company for those eleven years?

A That's correct.

Q Did State Farm Fire have a claims department when you began at State Farm?

A To the best of my knowledge, they did not.

Q When did State Farm start a claims department, State Farm Fire, start its claims department, approximately?

A It's my understanding State Farm Fire started [108] their claims department approximately 1970.

Q And do you know who headed up that claims department?

A Yes, I do. An individual by the name of Richard Aaberg.

Q Where did Mr. Aaberg come from?

A Mr. Aaberg came from the auto company.

Q Had he spent his, virtually his whole career at the auto company?

A To the best of my knowledge, I had him for school in 1965 in the auto company.

Q Was the claims department at the fire company that started in approximately 1970, where did most of the people come from that filled that claims department?

A The majority came from the auto company.

Q When you went to work for the fire company, where did you come from?

A From the auto company.

Q Did you discover, when you got to the fire company, that you had to be completely retrained on claims handling, that your training at the auto company didn't apply?

A In my opinion it applied, particularly to casualty or liability claims.

Q Does the fire company write some auto [109] policies?

A Yes, they do.

Q As of when you were last with State Farm, was the auto company doing the claims handling for State Farm Fire's auto policies?

A Yes.

Q Were different procedures followed when that happened, or were they the same?

A They were the same, to the best of my knowledge.

Q Are you aware that -- Let me ask a prior question. Have you testified in other cases about State Farm's practices?

A Yes, I have.

* * *

Q (BY MR. CHRISTENSEN) Are you aware that [110] State Farm auto, in this case and others, takes the position that the Excess Liability Handbook, and the practices set forth in it, did not, were not followed in the auto company?

A That's my understanding, that that's the position that they have taken.

* * *

[111] * * *

Q (BY MR. CHRISTENSEN) Now, in many cases, in many situations, Mr. Crowe, are the auto company and the fire company housed in the same building, sharing the same offices?

A Yes, they are.

Q Is that true in Utah?

A It was true in Utah, except with the, a brief period of time where the fire company was housed in a different office.

Q Through your years with State Farm, did you attend a number of meetings where both State Farm Fire and auto people were present?

A Yes, I did.

Q Is there a lot of interchange between the claims people with State Farm Fire and State Farm Auto?

A Yes, there is.

Q Did you find that, as far as how you were expected to deal with claims where there was excess exposure to the insured, that there was any difference [112] between the fire company and the auto company's practices and philosophies?

A In my opinion, there was not, in that instance.

Q Was reducing average pay per claim emphasized at the auto company?

A Yes.

Q Was reducing average pay per claim emphasized at the fire company?

A Yes.

Q Was the PP&R program one of the methods that was used to emphasize reducing and controlling average pay per claim?

A Yes.

Q Did the PP&R program apply to both State Farm Fire and State Farm Auto?

A Yes.

Q Did you provide, as part of the discovery in this case, some documents that you had in your possession from your years at State Farm?

A Yes, I did.

Q Did you provide a copy to me, as well as other counsel in the case, of your PP&R from 1987?

A Yes, I did.

Q Was that the year you were over both fire and [113] auto?

A Yes.

Q I ought to have you explain what a PP&R is, if you would, please.

MR. BELNAP: Counsel, could I ask you a question? Could I just have a moment, Your Honor?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) The PP&R I've handed you is -- let me look at it again -- is dated November of '87. Would it have been the prior one that applied to when you were with both fire and auto?

A My recollection of the prior one would cover basically January through December of '87, and the one prepared in November of '87 would be basically for the following year, for '88.

Q Would the one prepared in November of '87 have covered any time period where you were over both fire and auto? Actually, if you'll look at the page I've handed you, does it refer to both fire and auto?

A Yes, it does.

Q Okay, would you explain what a PP&R is.

A Okay, a PP&R is performance, planning and review, which is the system State Farm uses to review an employee's performance, and evaluate their next salary increase.

[114] Q Let me show you one page from your PP&R. Are these goals that you set with your supervisor?

A Yes.

Q This D, "Hold average paid auto BI, PIP, PD indemnity costs within 5 percent of '87." Did that refer to State Farm Fire, or State Farm Auto?

A That refers to auto.

Q And the next one, "Hold average paid fire indemnity costs within 5 percent of '87." Was that State Farm Fire, or auto?

A State Farm Fire.

Q And does F refer to both companies?

A Yes.

Q All right, let me move on, I'm going to skip some things in the interest of time. This is already an exhibit, I'm not going to make it another one. This was marked as Exhibit 1 to your deposition. Would you explain what that is?

A This is the performance, planning and review, it was a manual to be used as a guideline when the PP&R, performance, planning and review process went into effect.

Q Was that 1979?

A I believe so.

Q Does this apply to both State Farm Fire and [115] auto?

A Yes, it does.

Q And did this document come from records you kept when you left State Farm?

A Yes.

Q Are you aware that State Farm claims it does not have this document?

A That's my understanding.

Q All right, I want to have you do what we call lay foundation for some additional documents. While that's being marked, I'll ask if you would describe this, please. What is that document?

A This document is a speech, or talk that Leo Jordan, who was associate general counsel for State Farm Insurance Companies presented to a group at the American Bar Association on August 14th, 1979, that pertains to extra contractual damages, the insurer's view.

Q Was this a document that you received while you were employed at State Farm Fire?

A Yes.

* * *

[120] * * *

Q (BY MR. CHRISTENSEN) Mr. Crowe, I'm going to show you what's been marked as Plaintiff's Exhibit 121-P. Are the documents contained in that exhibit documents that you received while you were an employee of State Farm?

A Yes.

Q When do you believe, approximately, you received those materials?

A To the best of my knowledge, the first time I saw this document was when I went to Virginia in 1979.

Q The title of the document is "Extra Contractual Lawsuits." And under that, third-party claims, is extra contractual lawsuits. Is that another word sometimes used for bad faith lawsuits?

A Yes.

Q Did you understand these were materials being [121] provided to you by State Farm as to, for your consideration with respect to the issues involved in extra contractual lawsuits?

A Yes.

MR. BELNAP: That calls for a yes or no. May I voir dire in aid of a foundational objection?

MR. CHRISTENSEN: Let me finish to lay the foundation. I think I'm entitled to do that before --

THE COURT: Continue to lay your foundation.

MR. BELNAP: Your Honor, could I just inquire? That would be the purpose for voir dire allowed, subject to the court's permission.

THE COURT: I understand. I'll allow Mr. Christensen to finish the foundational statements. The last foundation- - Just a minute, Mr. Christensen. I want voir dire to be used for foundation, and not for cross examination. I think it should be a clear distinction.

And Mr. Christensen, there is a pending application of the court to inquire of this person on voir dire on foundation, so before you ask any subsequent questions defer to Mr. Belnap.

MR. CHRISTENSEN: I understand that.

Q (BY MR. CHRISTENSEN) There are actually three different materials contained in this exhibit; is [122] that correct? The first is entitled "Extra Contractual Lawsuits," the second is an article from some sort of publication entitled "Bad Faith Insurance, Compensatory and Punitive Damages," and the third portion is entitled "Settlement Negotiations, Third-party Claims." Were these provided to you as a package?

A These all came together in one folder.

Q Did you understand that these were instructions that were being given to you which applied to both State Farm Fire and State Farm Auto on these subjects?

A To the best of my knowledge.

* * *

[126] * * *

Q Now, I asked you a question earlier, is it your understanding, based on all your years of experience with State Farm Fire and State Farm Auto, that the instructions contained in this exhibit applied to both claim handling at State Farm Fire and auto?

MR. BELNAP: Your Honor, I'm going to object for lack of foundation. There's no foundation for this witness to say that as to this document, based on his prior testimony, he was a fire employee, in addition to that prior testimony from deposition.

THE COURT: Overruled, I'm going to allow it.

Q (BY MR. CHRISTENSEN) Thank you. I'll lay a little more foundation, just to strengthen the record. I understand, Mr. Crowe, that there may be some technical differences between handling a fire, say a house burns, and handling a car that's totalled. There may be some differences in procedures.

As far as the basic philosophies and instructions and practices of claims handling, were they different from fire than they were at auto?

MR. BELNAP: Same objection. Can I have a continuing objection, Your Honor?

[127] THE COURT: You may.

THE WITNESS: Auto company handled fire company liability claims until fire company formed their own claim department in 1970. I found no difference in the methodology, shall we say, of the fire company and the auto company, when it come to extra contractual lawsuits and the way they were handled.

Q (BY MR. CHRISTENSEN) When you became the divisional claims superintendent in 1987 over both fire and auto, did you discover that the practices and philosophies were different between auto and fire?

A To the best of my knowledge, they were the same, as far as extra contractual or liability.

MR. CHRISTENSEN: Your Honor, we'd move the admission of Exhibit -- What's that exhibit number?

THE WITNESS: 121-P.

MR. CHRISTENSEN: 121.

THE COURT: It's admitted.

(WHEREUPON Exhibit Number 121 was received into evidence.)

Q (BY MR. CHRISTENSEN) Now, there has been a considerable amount of discussion already in this case about the Excess Liability Handbook, and it's already in evidence, but I would like to have you give a little background for that, as well.

[128] Did you see the Excess Liability Handbook while you were working at State Farm Fire in approximately 1979 or 1980?

A Yes, I did.

Q Was it provided to you as part of the handbooks and materials at that time?

A When I moved to Virginia, it was in the office when I arrived, in my office.

Q Now, do you understand State Farm has taken the position that you're apparently the only person who is currently able to say they've ever seen that handbook while they were at State Farm?

A It's surprising.

Q When you moved to Utah in -- What year was that?

A 1986.

Q Did you take your copy of the Excess Liability Handbook with you to Utah?

A Actually I believe I had two copies, and I brought them both.

Q Did you keep that handbook throughout the rest of your tenure at State Farm?

A Yes, I did.

Q I want to cover some portions of this with you. Do you see the instruction at the top of page 2021 [129] from the Excess Liability Handbook entitled "Self-serving Correspondence"?

A Yes, I do.

Q In cases involving excess exposure, were there instructions at State Farm concerning the use of self-serving correspondence?

A Yes.

Q What were those instructions?

A Well, the instructions were to put documents in the file to strengthen your position, to maintain your position, explain your position on a case.

Q And are those instructions given orally, as well as in the Excess Liability Handbook?

A Yes.

Q Now, there's some question as to when the Excess Liability Handbook may have become obsoleted. During the entire time you were at State Farm, was that instruction repeated orally?

A I never heard it repeated orally.

Q Excuse me?

A I never heard it repeated orally.

Q Okay, I think you've, either you're confused or I am.

A Okay.

Q Were the instructions about using [130] self-serving correspondence given right up to the time you left, in an oral form?

A To the best of my knowledge it never changed.

Q Did that apply to both fire and auto?

A To the best of my knowledge, it did.

Q I'm now showing you page 2018 of the Excess Liability Handbook. Up at the top where it says, "Purpose," and I'll read that. "To provide education, training, and assistance to divisional claim superintendents." Were some divisional claim superintendents that worked with the fire company, auto company employees?

A Yes.

Q I'm now showing you page 2024. Do you see the heading, "Court Bonds"?

A Yes.

Q Let me read that. "Caution," with an exclamation point. "When ordering a bond in accordance with the basic memorandum, care must be taken to never order a bond in excess of the policy limits without express prior approval of general claims." And then the next sentence refers, uses a specific word, "supersedeas bond." Do those instructions apply to both fire and auto, as far as you were aware?

A To the best of my knowledge.

[131] Q I'm now going to show you page 2028 of the Excess Liability Handbook. This was a specific section, and I've forgotten the section of it. I think this is part 4 of the handbook. Part 4 consisted of a transcript of a presentation made by Ross G. Hume. Who was Ross G. Hume?

A Well, the document indicates he was senior claim counsel for State Farm Mutual Automobile Insurance Company.

Q I'm going to show you what is page 236 of the Excess Liability Handbook, and I'm going to specifically point you to this sentence right here which says, "Since we are the largest writer of automobile insurance." Does that refer to the fire company?

A It sounds like it refers to automobile to me.

MR. BELNAP: Is that part of the same Hume talk that you're taking that out of?

MR. CHRISTENSEN: I think it's part of part 4.

MR. BELNAP: Is that the Hume talk that you refer to?

MR. CHRISTENSEN: I believe it is.

MR. BELNAP: Thank you.

Q (BY MR. CHRISTENSEN) I'm going to show you a page from part 5 of the Excess Liability Handbook. It's [132] page 2047 of the trial exhibit. Do you see the reference up here to ACR?

A Yes, I do.

Q What does that stand for?

A It stands for Automobile Claim Report.

Q Did the fire company have a report called ACR?

A No, they did not.

Q How about CLR? What does that stand for?

A It stands for Combined Liability Report.

Q Is that an auto or fire report?

A It's an auto report.

Q I'm going to show you now page 2049 from the handbook, also part of part 5, it talks about the attorney's file review and opinion, and the statement, "Attorney's opinion is necessary to a careful evaluation of the case for settlement."

Now, let me show you the next page, page 2050. Do you see the instruction, "Estimate as to amount of verdict if plaintiff wins, not in writing if policy limits are involved."

A Yes.

Q Are these instructions on what the attorney's report is to contain?

A It's my understanding.

[135] * * *

Q (BY MR. CHRISTENSEN) Mr. Crowe, are you aware that State Farm claims that the auto manuals from this time frame have been destroyed?

A Repeat the question.

Q Are you aware that State Farm claims that the auto manuals from this time frame, that is the 1970s, have been destroyed?

A It's my understanding.

Q All right, getting back to my question, the instruction that the attorney is not to put the estimated amount of the verdict in writing if policy limits are involved, would you explain what that means?

A Well, basically --

MR. BELNAP: The document speaks for itself, Your Honor.

THE COURT: Overruled. I'll allow him to answer it, his understanding.

[136] THE WITNESS: Well, it means if the case is evaluated at policy limits, at least policy limits, or even greater, that the estimate should not be put in writing in the file.

Q (BY MR. CHRISTENSEN) All right. And then down on number 7, "Opinion as to settlement value, not in writing if possible limits could be involved." Did those instructions, regardless of whether reference is made to this handbook or not, were those instructions part of the training at both State Farm Fire and Auto?

A To the best of my knowledge.

Q Right up to the time you left?

A I know of no changes.

Q Now, in a supplemental deposition that was taken from you by State Farm just a few days ago, were you shown

a memo from '79, and another one from '86, purporting to obsolete the Excess Liability Handbook?

A Yes.

Q Had you seen those while you were at State Farm?

A No, I did not.

Q Are you aware when the handbook was produced in this case by State Farm, they weren't produced with it?

A Pardon?

[137] Q Do you know that -- Are you aware that when the Excess Liability Handbook was produced by State Farm, those weren't produced with it?

A That's what I've been told.

Q They were not produced until a considerable time later?

A It's my understanding.

Q And do you have any way of knowing whether those are authentic or not?

A Those two documents? No, I do not.

Q Do you have an understanding, from your involvement in this case and others, that State Farm claims to have destroyed its documents from the '70 and '80 time frame?

A It's my understanding.

Q Now, Mr. Crowe, even if you assume that State Farm did obsolete the Excess Liability Handbook, were the practices and policies expressed in it taught at State Farm right up to the time you left?

A It's my opinion that they were.

* * *

[143] * * *

MR. BELNAP: I have another matter I'd like to bring up very briefly, Your Honor.

[144] THE COURT: Briefly.

MR. BELNAP: On Thursday, we had raised objections to Mr. Slusher testifying, on Friday Mr. and Mrs. Ospital testified, and we had raised objections to them testifying. There has been a ruling entered in this court of final judgment dismissing their claims that they brought in 1986, with prejudice, and that is final.

The court is also aware of the Pixton case that indicates that no duty is owed to a third party. The court, likewise, ruled that their testimony concerning damages was irrelevant, and also, under 403, was not admissible.

Both of those individuals, or all three of those individuals, Mr. Slusher, Mr. Ospital, and Mrs. Ospital, got on the stand. Mr. Slusher was emotional and broke up into tears, not wailing by any means, but was emotional. Mr. Ospital was likewise emotional in talking about damages and the loss of his son.

We believe that that evidence is irrelevant and highly prejudicial, and we would move for two things, Your Honor. We would move for a mistrial on the way that that evidence was brought in, knowing our objection, knowing the court's ruling.

[145] If the court, in its discretion, does not believe a mistrial is appropriate, then we would move, and ask Your Honor to strike the testimony of Mr. Slusher and Mr. Ospital, and Mrs. Ospital, concerning damages, concerning their alleged mistreatment by State Farm, and to instruct the jury with a cautionary instruction, along with the striking of that testimony, that that evidence was irrelevant and should not be considered by them in this case. Thank you.

MR. HUMPHERYS: By way of background, in opening statements and through some of the cross examinations by State Farm, they raised the suggestion, and even in opening statements, as I recall, overtly stated to the jury that they had

fully complied with the wishes of Mr. Campbell after the verdict was rendered, and that the suggestion was made that the 1984 agreement was, first of all, nothing more than greedy attorneys and greedy Slusher and Ospitals. Because Mr. Campbell stands to gain little or nothing out of the ultimate outcome.

They have suggested in cross examination that there was no motivation or intent on the part of Slusher or Ospitals to execute on Mr. Campbell's personal assets, and that Mr. Campbell was never at risk for [146] losing any of his personal assets, and third, they've suggested and argued that Mr. Campbell's emotional distress was really insignificant because there was never any kind of a realistic execution, or threat of execution on his personal assets.

Then they take the 1984 agreement and suggest that at that point in time there was nothing further that State Farm could be held responsible for by way of its actions. And then in 1986, it suggests that it acted appropriately by stepping up and offering to make full payment of the judgments through a series of offers, and through, and if the matter were appealed.

Now, given the context of the way State Farm has chosen to present their side of the case, which, to a large degree is very deceptive, and is not consistent with the facts, it is not consistent with what Slusher and Mr. and Mrs. Ospital were feeling and sensing as they were considering whether or not to execute, it is not consistent with the fact of what happened to Mr. Campbell and Mrs. Campbell and what they were experiencing, and the negotiations that were taking place.

It is not representative of the facts that transpired in 1986 when State Farm, rather than simply stepping up and say, "We'll pay," they tried to [147] negotiate settlement, compromise settlements, and put pressure on the Campbells

to release their claim. All of the evidence which was presented last week by Mr. Slusher and Ospital went to the issue of intent, of their intentions, of their opportunities, of their desires to execute on Mr. Campbell's assets. It went to the issue of how the terms of the 1984 agreement were considered and negotiated, and finally resolved, it went to the fact that in 1986 State Farm's offer was not as they represented it to be, and that the parties, Slusher and Ospital at this time, through the 1984 agreement, did have a right to work with Mr. Campbell in deciding the settlements, if any.

And the fact that we have clarified, I clarified through questions that they were not suggesting they had a personal claim, but they were talking about a claim by and through the '84 agreement with Mr. Campbell, or in other words, Mr. Campbell's claim, that certainly, there is no grounds for mistrial. These are doors that have been opened by State Farm, not by the plaintiffs.

Second, there's no reason to strike the testimony, because they went to the very heart of one of the things that State Farm is suggesting and arguing.

Now, we, I, in particular, in opening [148] statements, told the jury about the judge's order regarding damages after 1984. The court will instruct the jury regarding damages after 1984, and will instruct the jury that only the damages of Mr. and Mrs. Campbell may be considered. And there has been no attempt on the plaintiff's part to try and portray somehow that the jury should be awarding damages other than what the court has said. I made a specific point in opening, in my opening remarks to explain how the judge had limited the damages.

And so it would be most inappropriate, now, for State Farm, after having opened the doors, created a false impression, and as we tried to respond to those impressions

on a limited basis, which the judge restricted and limited our testimony, then to somehow punish the plaintiffs for doing the very thing we had to do, which is respond to doors opened by State Farm.

And so I think, Your Honor, in the totality, the jury understood what was going on, that what was portrayed was circumstantial to the decisions which were made by the parties, and the court will instruct, and I'm sure will address these issues clearly regarding what may be considered and what may not be considered for purposes of deciding damages.

And there certainly is just no basis upon [149] which there is either a mistrial or a reason to strike their testimony.

MR. BELNAP: Your Honor, first of all, in terms of an allegation that we've raised a false impression. It was at the direction of, at the request of Mr. Humpherys and the direction of this court that we not talk about the dismissal of the Ospital and Slusher's claims in 1986, and we did not do that. But at this point it is a fact that they were dismissed, it is a fact that there was a pleading filed with the court in 1986 indicating unconditionally that State Farm would pay.

So to call that a false impression at this point, we think we're either entitled to, A, a stipulation that State Farm unconditionally offered to pay in August of '86, or we're entitled to get in that evidence that there was a lawsuit filed, there was that offer made, and the case was dismissed.

Moving on, Mr. Humpherys admits that issues pertaining to damages have no relevance or place in this case, and they did come in through these people. Furthermore, these people testified, if the purpose of their testimony was to indicate the reason they entered into the agreement, they initially testified that they agreed to the concept, and the terms of that agreement, [150] in January of 1984.

If they're going to talk about why they entered into that agreement, it was relevant as to January of 1984. But to talk about offers that were made in '86, or the conduct of State Farm in '86 or thereafter is totally irrelevant, and not probative of anything, and prejudicial.

And to say that we've opened the door, Your Honor, is simply not the case, and we would renew our motions that we've made. And I think Mr. Hanni wanted to make a comment, if that's acceptable.

MR. HANNI: Your Honor, I'd like to just make this observation. That the plaintiffs, all the way through this, have made comments about the settlement efforts in 1986 were inappropriate. Mr. Humpherys just now said, "Why didn't State Farm step up to the plate in 1986 and pay the judgment in full? Why did they try to negotiate? Why did they try to get a full release of everything, including bad faith, for less than the amount of the judgments?"

The answer to that is this. We had, State Farm had a very legitimate basis for their post trial motions, and had very legitimate basis for the appeal. Now, the court's already ruled, and I'm not arguing with the court's ruling, because you've ruled that we're not [151] to get into the appeal and all of that kind of stuff, and the grounds and the so-called collusion agreement.

But I just want to point out to Your Honor that those two agreements were entered into the settlement agreements. There was a substantial issue on the appeal, namely that the trial court did not tell the jury about the settlement. The Supreme Court held that was error, and held that that should have been told, but it did hold it was harmless error.

Now, what I'm saying is, there was a substantial basis for that appeal. Now, when that is true, there is nothing wrong, as the plaintiffs have suggested all the way through this trial, with saying, "All right, we've got a substantial basis for this

appeal. Our limits are 25 and 50. You've got a $50,000 judgment, you've got a $133,000 judgment. We will pay you $100,000 for your 133, or we'll recommend that, and we'll recommend thirty-seven-five for your $50,000."

They turned that down. There's nothing wrong with that. We thought we had a basis for reversal, and but for a whisker, the Supreme Court could have said that was prejudicial instead of non-prejudicial.

Our next effort, Your Honor, was in February, where we said, "All right, you won't take less than the judgment, we will offer you the full judgment, interest [152] and costs, but included in that is to get rid of the bad faith claim." They turned that down in February.

In August of '86, we then said, unconditionally, "We will pay the judgment with interest and costs." Now, there's nothing wrong with negotiating in that fashion. Any lawyer worth his salt would do it. Any insurance company worth their salt would do it. We had a substantial basis for that appeal, we were willing to give it up.

And for the plaintiff to sit here and say that we were wrong, and to say State Farm, "Why didn't you step up to the plate and pay the whole thing instead of going through this charade of trying to negotiate a settlement?" They have made that point all the way.

And Your Honor, I think we are entitled, now, and I want to suggest this again, to get into the collusion aspect of this case, to get into the settlement aspect of it, and they've opened that door. And to show that State Farm had a very substantial basis for that appeal, and had the second agreement been made known to the trial court, and the effect of that, the result of that underlying case could very well have been different. And the ruling in the Supreme Court could have been different.

And the thing I'm objecting to, here, now, is [153] the suggestion that by offering less than the judgment, then offering the amount of the judgment, then making the unconditional offer, was wrong, is something that the plaintiff, I think, has opened another door. And we should be permitted to get into that kind of evidence.

In addition, there was absolutely no duty owed to Ospital, and that's a matter of law, or to Slusher, or either of the Ospitals, and they were permitted to testify at length up there upon a damage issue.

THE COURT: Counsel, the court's going to deny both motions. It does so on the following grounds. In general I believe that the arguments made by the plaintiffs are persuasive, however, I would note for the record, first of all, I believe that the testimony, given the very emotional and difficult nature of it, was constrained. The court was very mindful of the rulings it had made, it was monitoring question by question and listening to the objections that counsel for State Farm made as that went, as we went through that process, and believed that it ruled appropriately under the order that it had made during that colloquy.

The court finds it somewhat disturbing that now, several days later, after several witnesses, that this issue was raised as if it wasn't very carefully [154] examined at the time, after the fact, and claiming some prejudice that wasn't argued beyond what it was at the time. And the court considers it, not only that the court's rulings were proper, that the testimony was within it, but it's also untimely.

The court also believes it's a point that State Farm has made at least three times, now, and the court has heard it three times and has denied it three times. That the doors were opened, that the opening statements where arguments were presented to the court by Mr. Humpherys, that anything past 1984 was going to open doors that would necessitate going

into the matters after 1984, the 1986, 1989, counsel for State Farm aggressively pursued their point, did not wish to have any limitations on that issue, and the court allowed it to come in based on the arguments that State Farm made as how much prejudice they would suffer if they weren't allowed to go into that, with the understanding, and I believe it was clearly stated by them, and certainly by the court, that, "You've opened a door, we're going to allow that door to be pursued," and believe that this is one more argument based on doors that were opened by State Farm.

The court also believes that the nature of the damages are something that need to be, I don't want [155] to -- In terms of what the claims, who the claims or damages were against, and the nature of that agreement with Ospital and Slusher and Campbell were something that the jury has to have clearly in mind, and I believe some of the testimony went to that.

I don't see that this is an appropriate occasion to reopen the questions that the court's ruled on before, and I'm not going to allow revisiting those rulings that the court made before.

* * *

[156] * * *

CROSS EXAMINATION BY MR. BELNAP:

* * *

[159] * * *

Q Okay. Now, in 1979, you were promoted to be a claims superintendent in fire; is that right?

A That's correct.

Q And that was in Virginia?

A Yes.

Q And you worked in that job until 1986, when you transferred to Utah?

[160] A I was promoted and transferred to Utah, yes.

Q All right. And when you came to Utah, you were a divisional claim superintendent for the fire company; isn't that true?

A That's true.

Q And then for approximately nine months, in 1987, you worked for both auto claims in northern Utah as a divisional, and fire claims throughout the state; is that correct?

A I don't recall that it was nine months or a year, but it was in the 1987 time period.

Q Okay. You wouldn't dispute that it was approximately nine months, would you, Mr. Crowe?

A I don't recall exactly.

Q Okay. And then after this period of time, 1988 to 1990, you were a divisional claims superintendent for the fire company; is that correct?

A That's correct.

Q And then, in 1990, you were demoted to a claim representative, and then terminated; is that true?

A That is correct.

Q Now, during the time that you were here in Utah, for approximately four years in a supervisory capacity, at various times did you have five claim superintendents that you worked directly with?

[161] A Somewhere in that vicinity. I don't recall the exact number. It varied during that period of time.

* * *

Q Mr. Crowe, isn't it true that, with respect to each and every one of these five claim superintendents, you did not ever show them the Exhibit 21, the Excess Liability Manual; isn't that true?

A I'm quite sure I didn't.

Q And you never sat down and trained them in the use of that manual; isn't that true?

[162] A I didn't take the manual out and sit down with them and show them the manual, that is correct.

Q And you did not sit down and discuss the manual with them; isn't that true?

A I didn't discuss the manual, that's right.

Q Thank you. And you never saw another copy of that manual while you were here in Utah, other than the one that you had; isn't that true?

A Yes, I had no reason to look for another copy.

Q So that's true?

A Yes.

* * *

[164] * * *

Q Okay. Line 7, Mr. Crowe, page 158 of that deposition. "Question. Did it make sense to you when you were at State Farm that when you got a new revised policy or insert to a new revised procedure manual, that you would discard the old one?"

"Answer." Please read it, if you can, from there, or I can read it.

A I can read it, with my glasses.

Q Thank you.

A "When I was at State Farm that made sense to me, as far as manuals." I emphasize manuals.

Q "Question. Doesn't that make sense in terms of good claims handling practice, that you would want to make sure that you were handling the claims according to the latest procedure, rather than some old, outdated procedure?" Your answer, sir?

A "On a claims manual, certainly."

Q "Would that be true for training materials, as well?"

A I indicate, "You'd want to utilize the most [165] current training materials."

Q Thank you. Mr. Crowe, isn't it true that you believe that most of the people that you have worked with over the years at State Farm are good, honest individuals?

A Of course I believe they are.

Q And among those people that you believe are honest individuals, among others, is Paul Short; isn't that true?

A I believe Paul is.

Q There was never a time, Mr. Crowe, when you were here in Utah, in either fire claims or auto claims, when you directed any of the claim representatives or claim superintendents to refer to the Excess Liability Manual for any procedures; isn't that true?

A I never referred directly to the manual, that's correct.

* * *

[170] * * *

Q Mr. Crowe, isn't it true that you worked for State Farm for about twenty-five years?

[171] A Correct.

Q And during that entire time, you were never ordered to change a file, nor would you do that; isn't that true?

A I have no recollection of being asked to myself, nor do I recall ever changing a file, personally.

* * *

[174] * * *

Q "Were you ever aware of a company policy, in all of the years with State Farm, where State Farm would allow a policy holder to be shortchanged?"

"Answer. Do I know of any policy?"

"Question. Yes."

"Answer. Specific policy where they would allow a policy holder to be shortchanged?"

[175] "Question. Yes."

Continuing on page 65, "If that's the question as I understand it."

"Question. Yes."

"Answer."

Would you read that to the jury, please?

A "I do not know of any specific written policy of State Farm."

Q "Question. Were you aware of any informal understanding or belief that was imparted to you as the supervisory person, divisional, or even a claims specialist, that State Farm would allow a policy holder to be shortchanged?"

Your answer, please read it.

A "I'm not aware of any policy, informal or formal, to that effect."

* * *

[179] * * *

Q Continuing on page 79, line 18, "Did you ever see anything in your twenty-three-odd years with State Farm that led you to believe that State Farm, as a practical matter, not just a philosophical matter, was not being fair and reasonable to its insureds in the claims process?"

Your answer? Could you read that?

A "I don't recall any specific instances while I was with them."

Q Now, Mr. Crowe, while you were with State [180] Farm in the capacity of a fire divisional in Virginia, as a fire representative, as an auto representative, and in Utah for approximately four years, you saw hundreds, perhaps thousands of claims, did you not?

A Yes, I did.

Q And when you gave this testimony, you were under oath, were you not?

A Yes, I was.

Q Mr. Crowe, do you recall giving a deposition in a case entitled Dix?

A Yes, I do.

Q Would you agree, Mr. Crowe, that State Farm has a fine, and did have a fine training program for its employees, in your opinion?

A In my opinion it was an excellent training program for them to train their employees the way they wanted them to do things.

Q And in regard to that training, Mr. Crowe, isn't it true that it is your opinion that State Farm resolved doubts in favor of the insured in a claims process?

A Many times they did.

Q Did you indicate, Mr. Crowe, in the Dix case, on even page 70, line 14, "Did you intentionally shortchange insureds while you were a claims [181] superintendent in Virginia?" Your answer, could you read that?

A "Never. Probably paid more than less."

Q "At all times that you were in management at State Farm, you were aware of the State Farm philosophy that the company wanted to pay what it owed under the terms and conditions of the insurance contract, correct?" And your answer, please?

A "That was what was expounded by the company, that is correct."

Q "And at all times that you were with State Farm you were aware of the philosophy that if there is a doubt about what is owed, those doubts are to be resolved in favor of the policy holder; isn't that true?" Your answer?

A "That was my own personal position."

Q "Question. That was the position, the company position, at State Farm at all times that you were in management with the company; isn't that true?" Your answer, please.

A "That was my understanding of what they espoused."

Q Mr. Crowe, you've talked about the PP&R process. Do you recall that testimony?

A Yes, I do.

[182] Q Would you agree that, in the handling of claims, that you and any other claim person that's handling claims does not know the exact value of a claim, nor does a plaintiff's lawyer?

A I agree to that.

Q Claims are valued in a range, are they not, Mr. Crowe?

A Yes.

Q And Mr. Crowe, isn't it true that you have testified that it was your experience and practice to settle claims within that range of value at State Farm?

A I'm sure I did.

Q And is it not a fact, Mr. Crowe, that most claims at State Farm settle without there ever being a lawsuit filed?

A Oh, I agree.

* * *

[184] * * *

Q Now, Mr. Crowe, when you're handling the supervision of a claims operation as a divisional claims superintendent, you are responsible for all costs of that operation, are you not?

A Correct.

Q It's just like running any other business, is it not, Mr. Crowe?

A Very similar.

Q All right. And when I say any other business, I mean in terms of the fact that if you do not pay attention to your expenses, and if your expenses overrun the income for very long, you'll be out of business, won't you?

A That's correct.

Q And you have talked about the PP&R process, and you have discussed with the jury that in 1987 you had a goal for yourself as a divisional to try and hold the average paid cost to not increase more than 5 percent in the coming year; isn't that true?

[185] A That's correct.

Q And Mr. Crowe, isn't it a correct statement that the method by which you would teach your people and train your people to do that would be through effective claims handling, proper investigations, contact, proper negotiations, and not through improper claims handling?

A I felt it was proper, yes.

* * *

[188] Q And isn't it true, Mr. Crowe, that while you were at State Farm, that each case was handled on its own merits?

A I believe we tried to do so.

Q So if you have a goal that's in your PP&R that on a certain percentage basis you're going to look at average paid costs, your goal was to have your people handle each case on its own merits; is that correct?

A Yes, to handle each case on its own merits.

Q And it was your experience at State Farm that policy holders were not changed, and this program was not used to the detriment of any policy holders; isn't that how you've testified?

A My experience was to pay as little as possible, and we didn't feel it was the detriment of any policy holder, certainly, at that time.

Q As we've reviewed, Mr. Crowe, haven't you testified that this was never used to the detriment of any policy holders?

A I didn't believe it had been, yes.

Q Mr. Crowe, is being aware of indemnity cost and being concerned for that a proper concern by an insurance company?

A I think you need to be aware of it.

Q Is it a proper area of concern for an [189] insurance company?

A I think it's an area of concern.

Q Have you testified within the last two months that it is a proper area to be concerned with, Mr. Crowe?

A Oh, I'm sure I may have.

Q Okay. Have you also testified within the last two months, Mr. Crowe, that the objectives in the PP&R process would be considered to be encouraging good claims handling objectives?

A I think some of them certainly are.

Q Now, there's been some discussion on your direct examination about average paid costs. Do you recall that discussion?

A Yes.

Q Okay. Mr. Crowe, in a situation where you have a case, and let's say that it is tried, or dismissed without any payment, so as a result of that case there are no dollars paid out because either a jury doesn't award any money at the trial, or a court dismisses it, or it's otherwise dismissed. Isn't it true that this does not result in a lowering of average paid costs?

A Correct, only an average closed cost.

Q So in this case, Mr. Crowe, if State Farm, [190] when a decision was made to try this case in 1983, if that had been a correct decision, and their evaluation was correct, that

Mr. Ospital, Todd Ospital would be found more negligent than Mr. Campbell, he would not have recovered anything against Mr. Campbell; isn't that true?

A Yes, on that basis.

Q And if that had been the case, that trial result would not have resulted in any lowering of average paid costs; isn't that true?

A Only in lowering of average closed costs.

Q There's no mention in your PP&R, or any other PP&R that I've seen, discussing average closed cost. Can you point that out to me, Mr. Crowe, if I've missed it?

A I don't recall seeing any goal to that effect on average closed.

* * *

[191] * * *

Q And you do not have any problem with an insurance company keeping statistics about what are paid in claims, do you?

A I don't have any problem with that, one bit.

Q Mr. Crowe, going back to the McKinley case in 1992, you recalled that case, did you not, sir?

A That was a Nevada case, I believe.

Q Okay. I want to refer you to page 66 of your deposition, line 6. "Did you ever see an instance where a policy of controlling or keeping indemnity payments to the minimum ever resulted in the actual prejudice or detriment to an insured where he received less than he was actually owed?"

Your answer, please.

A "I may have seen a case at some point in time."

Q "Do you recall that case now?" Answer?

A "The case in question is one."

Q And that means the case you were talking [192] about here was the McKinley case that you were hired on; is that right?

A Correct.

Q Question, line 13, "In all the years you were with State Farm, did you ever see a case like that, where you either handled, supervised, or acted as a divisional?"

Your answer, please.

A "To the best of my knowledge, no, not as far as my division."

* * *

Q And question on line 20, "Well, let me ask you about this, because I think it maybe even gets into some of your academic and experience background. There's nothing, per se, wrong with a management tool of attempting in the claims area to control the average [193] cost per claim, is there?" Your answer?

A "That's one of your jobs, with -- For the employer that you're working for."

* * *

[203] * * *

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Crowe, would it be accurate for this jury to be left with the impression that you don't believe State Farm takes unfair advantage of claimants?

A Repeat the question, please.

Q Would it be accurate for this jury to be left with the impression that you don't believe State Farm takes unfair advantage of people that make claims?

A I don't believe that would be accurate.

Q Did you give many pages of testimony in a deposition in this case describing the different unfair methods State Farm uses to cheat people?

[204] A I believe so. I don't recall the specific comments.

* * *

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* * *

JOHN W. CROWE called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

[5] **REDIRECT EXAMINATION BY MR. CHRISTENSEN:**

Q Mr. Crowe, yesterday you were asked at some length by Mr. Belnap about claims practices at State Farm. Mr. Crowe, while you were at State Farm --

And before I get into this, let me ask this. Several times, in response to questions, you made comments something like, "I felt that way back then." And I'm going to give you an opportunity in a minute to explain that.

Before I do, let me ask you this. While you were at State Farm, were you taught, at least in the early years, not to pay, and agree to fix somebody's car until they released their personal injury claims?

MR. BELNAP: Objection, leading.

THE COURT: Sustained.

MR. CHRISTENSEN: Your Honor, I've got some concern about that. They were allowed, in essence, to make this witness their witness for much of the exam yesterday. It represented, it would save time and save them from having to call him later. I'm covering areas now that went beyond the scope of direct. And in essence they're making this man their witness. And I think I'm probably entitled to lead.

MR. BELNAP: Your Honor, this gentleman, [6] Mr. Crowe, was retained by them as an expert, and I don't think it's appropriate at all for him to be led.

THE COURT: I'm going to stand by my ruling, Mr. Christensen. Proceed with non-leading questions. I think Mr. Belnap's been reasonable in allowing you to lead, but when it's on a controversial area --

Q (BY MR. CHRISTENSEN) Would you explain what your training was, if any, with respect to how you were to handle the property damage or car repairs where someone also had a claim for personal injuries?

MR. BELNAP: Could we have some foundation, Your Honor, as to the year of this training that he's talking about?

MR. CHRISTENSEN: I'm going to get into that.

THE COURT: All right.

THE WITNESS: Well, in the early years, you would not pay the property damage claim unless you were able to settle the injury claim.

Q (BY MR. CHRISTENSEN) And approximately what years was that training taught?

A Oh, I'd estimate '65 through possibly '70.

Q Did you do that?

A That's correct.

Q At the time did you feel it was unfair?

A No, I did not.

[7] Q Why not?

A Because that's how I was trained, and that's the way State Farm wanted things done.

Q And looking back now, does that seem unfair to you?

A It's definitely unfair.

Q Did State Farm voluntarily, as you understood it, discontinue that practice?

A Not to the best of my knowledge.

Q What was your understanding as to why it was discontinued?

A The Unfair Claim Practices Acts.

Q Yesterday Mr. Kingman testified that State Farm always pays full fair value of every claim. Is that consistent with your experience at State Farm?

A No, it is not.

Q What were you taught with respect to whether or not you should settle as cheaply as you could?

A We were taught to settle a claim for as little as possible.

Q What training, if any, did you receive with respect to whether people tend to know what their claims are worth?

A Most lay people don't have the slightest idea as to what their claim is worth.

[8] * * *

Q (BY MR. CHRISTENSEN) What, if anything, were you taught at State Farm with respect to taking advantage if a claimant didn't know what their claim was worth?

A Well, we were taught, for one thing, to add up, what we call the specials, basically the medicals and the wage loss, and go ahead and make an offer on that basis, disregarding any general damages, which basically is your pain and suffering, inconvenience, [9] that type of thing.

We were taught to pull out your checkbook or your draft book and set it out in front of them along with a release and add up everything and say, "Is there anything else?" And if they said no, "Sign here."

Q And if they were not aware that they were entitled to general damages, what were you taught, as far as whether you should tell them?

A Well, we just go ahead and make that offer, and if they thought they should receive more than that, then you would listen to what they had to say.

Q What if it was clear to you that they didn't know they were entitled to general damages? Were you instructed to tell them, or not to tell them?

A Not to tell them.

Q And did you do that?

A Yes, I did.

Q In some cases, at least, are generals greater than the medical bills?

A Yes.

Q Sometimes are they several times greater?

A Yes.

Q What were you taught with respect to whether you should go in and provide information of what you thought the claim was worth, or whether you should try [10] to get the claimant to say first what they wanted?

A You'd normally try and get them --

MR. BELNAP: Excuse me, Mr. Crowe. Could I just have a foundation objection as to the time that these bracketing and continuing relevancy objections, Your Honor, based on the prior statement?

THE COURT: I think you should tie each of these answers to a time period. I'll allow you to proceed by doing that, Mr. Christensen.

MR. CHRISTENSEN: All right, thank you.

Q (BY MR. CHRISTENSEN) What time frame are we talking about at State Farm? Were these practices taught early in your years there?

A They were taught early in my years there.

Q Were they still followed as of the time you left?

A Not all of them.

Q What about the -- We have discussed that the practice of not paying to fix the car, if they wouldn't sign a bodily injury claim, we've discussed that that was discontinued. We've now been talking about the practice of taking

advantage of people who didn't know what they were entitled to. Was that taught to you early on at State Farm?

A Yes.

[11] Q Was it still followed as of the time you left?

A I would say yes.

Q What about the practice to settle as cheaply as possible? What time frame was that followed at State Farm?

A As far as settling for as little as possible, I believe that was ongoing.

Q Now, we were talking about what instruction you received as far as trying to get the claimant to state what they thought the case was worth before you provided a number. Were you taught that early?

A Yes.

Q Was that followed throughout the time you were with State Farm?

A You'd normally try and get a demand from them first, before making an offer.

Q And let me explore that with you. Let's assume that you had decided their claim was worth twenty to $25,000, in that range, and you asked the claimant what they thought their claim was worth, and they said ten. What were you taught to do?

MR. BELNAP: Your Honor, I'm going to object that this is an incomplete hypothetical, irrelevant to the facts of this case. May I have a continuing [12] objection, also, on the relevancy as I've prior stated?

THE COURT: You may have a continuing objection as to relevancy based on your 404 and 403 objections.

Q (BY MR. CHRISTENSEN) All right. And I'll represent, so there's no misunderstanding, I'm not suggesting that ties directly to this case. What I'm simply offering it as an illustration of the concept we're discussing. Do you have in mind my example, or do you want me to repeat it?

A No, I have in mind your example. I believe if you have a range of value and the individual comes in below that range, you'd still make an attempt to try and negotiate a little bit further and reduce that demand and try and settle the claim.

Q So if you had determined that the claim was worth twenty to twenty-five, and the claimant, without knowing that, suggested they felt their claim was worth ten, would you try to pay less than ten?

A You'd try and negotiate further, yes.

Q When you would settle a claim for substantially less than State Farm had decided it was worth, were you told, "That's not fair, you shouldn't have done that"?

A No.

[13] Q What were you told?

A Well, usually you received a memo or some response saying, "Good settlement."

Q And you were praised for that?

A Yes.

Q Were you encouraged to do it again?

A Yes.

Q Now, did you believe these practices we've been describing were unfair at the time?

A Of course not.

Q Now, why do you say that?

A Because that's the way I was trained, that was the way I was indoctrinated, that's the way everybody was taught, and we felt we were being fair.

Q Looking back now, does it appear fair to you to have done these things?

A No, it does not.

Q What, if anything, were you taught about taking advantage of a situation where someone had an immediate need for money?

A Well, then you'd contact them and you'd consider that another tool in your negotiations, and make an offer, hoping that they'd go ahead and settle.

Q An offer of less than what seemed to be full fair value?

[14] A Could be less than your settlement, or your evaluation, your range of a valuation.

Q Did you use appearance allowance as a way to save money on claims?

A Yes.

Q Would you describe that, please.

A Well, appearance allowance could be either some minor damage to a vehicle, or in the fire company it could have been --

MR. BELNAP: Your Honor, I'm going to object as far as the fire company.

MR. CHRISTENSEN: Your Honor, he spent an hour talking about the fire company with this witness yesterday. I think there's been an absolute clear waiver on that.

THE COURT: Well, I'm going to overrule on two grounds. One, because it's already been opened up by Mr. Belnap, and secondly, I assume this colloquy has to do with fire company policies that involved auto insurance claims which have also been allowed in this case.

MR. CHRISTENSEN: I think this particular one does not, but it's an absolute direct response to the testimony elicited beyond the scope of cross yesterday by State Farm from this witness.

[15] THE COURT: I'll allow it.

THE WITNESS: Well, some examples, as I said, Mr. Christensen, on auto, if there was some minor damage you may just offer $100, for example, as an appearance allowance, rather than pay for the repairs.

In the fire company, one example that comes to mind is a burned countertop, for example, depending on what the location of the burn was, you may want to suggest putting a cutting board rather than replacing the entire countertop.

Q (BY MR. CHRISTENSEN) Under the policy, was the insured entitled either to a new countertop, or the money for the countertop?

A He certainly was.

Q If you were able to persuade that person to put a cutting board in where the burn was instead, who got the financial advantage of that saving?

A State Farm.

Q Would you tell the insured, "You're entitled to the full amount, but if you put in a cutting board, State Farm will save the money," would you explain their right to receive the full amount if they so chose?

A No, you'd suggest the cutting board, and if they went along with it you'd go ahead and pay it.

Q You kept your mouth shut?

[16] A That's right.

Q Were you taught to try to control the claimant?

A Yes.

Q What were you taught in that regard?

A Well, you were taught to try and establish a rapport with them, contact them promptly and sit down with them, establish a rapport, in an effort to avoid having them seek legal counsel.

Q Were you taught to attempt gain the claimant's trust and confidence in order to get a more favorable settlement?

A Of course.

Q And was this, of these last several things we've discussed, were those taught to you throughout your time with State Farm?

A Overall, yes.

Q And let me ask you about these items. At the time you did these things, did you feel you were being unfair?

A No, I did not.

Q Is that because of your training?

A It's because of my continuing training and indoctrination.

Q And looking back now, do you see it [17] differently?

A Yes, I do.

Q Now, Mr. Kingman testified yesterday that there was not emphasis at State Farm on reducing average pay per claim. Is that true?

A My opinion it's not.

Q I'm going to -- We showed you your PP&R from 1987 yesterday. I'm going to show you a page from your PP&R from 1988, and I'm going to point to you to item D under section, Roman Numeral III. What is -- Would you read that, please?

A It says, "Reduce average paid BI fire company indemnity costs by 10 percent of 1988."

Q What does the BI stand for?

A Bodily injury.

Q Is that an example of emphasis that was placed on reducing average pay per claim?

A Yes.

Q Were you expected to try to meet that goal?

A We tried to meet that goal.

Q Now, you were a supervisor at this time?

A In 1988?

Q Yes.

A 1988 I was a divisional claim superintendent.

Q To achieve that goal, did you have to get [18] other people to reduce their average pay per claim?

A You'd have to try, to get the whole division to reach that goal.

Q Did you expect them to use, among other things, the methods you've described here this morning to achieve that goal?

A Yes.

Q There's discussion about the Excess Liability Handbook. Is the term "handbook" only used by the fire company?

A No.

Q There's discussion as to whether that handbook was obsoleted, and if so, in what year. Whether or not it was obsoleted as a handbook, were the practices and policies that we discussed from that handbook still followed?

A To the best of my knowledge.

Q Was that true up to the time you left State Farm?

A To the best of my knowledge.

Q At some point did it appear to you they quit putting those things in writing, and simply taught them orally?

A Yes.

MR. BELNAP: Your Honor, I'm going to object [19] as far as leading.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Did it appear to you that, at some point, State Farm quit putting the instructions that we reviewed from the handbook in writing?

A Repeat the question, please.

Q Did it appear to you that at some point State Farm quit putting the practices and policies we discussed from the Excess Liability Handbook in writing?

MR. BELNAP: I think it's still leading, Your Honor.

MR. CHRISTENSEN: I don't know how else to ask it.

THE COURT: I'll allow it. Overruled.

THE WITNESS: I believe a lot of them.

Q (BY MR. CHRISTENSEN) When they were no longer put in writing, were they still taught orally?

A Verbally, yes.

Q Are you familiar with the term, "Mother Mutual"?

A Yes, I am.

Q What does that mean?

A That means State Farm Mutual Automobile Insurance Company.

[20] Q Was that term frequently used within State Farm?

A Yes.

Q And what did it mean?

A Well, basically it meant Mother Mutual was the head, and the other companies were the legs. I guess it's like an octopus, you know, with a lot of legs and the head, and the head controls the legs.

Q And the head was the auto company?

A Correct.

Q You were asked some questions that I want to ask one followup question on. Were State Farm's practices and policies for handling claims different in Utah than they were in other parts of the country, based on your knowledge and experience?

A Not other than complying with any specific Utah case law or the unfair claim practices.

Q You were asked if you had taken the Excess Liability Handbook and specifically taught people in Utah out of it, and you said you hadn't. I think, did you say you didn't see the need?

A I didn't see the need. It was overall continuing educating and training from day one with State Farm, and there's no need to pull out every single document that you acquire. You gather this and put [21] everything together and incorporate this into your training program as needed.

Q Were you aware that the people under you already knew these things?

A I was aware that, certainly most of them knew the things. Maybe some of the newer people didn't.

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EXCERPTS OF TRIAL TESTIMONY OF BRUCE A. DAVIS, JUNE 19, 1996

[Vol. 10, R. 10265, commencing at p. 24]

* * *

BRUCE A. DAVIS called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

* * *

DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Davis, would you state your name, please?

A Bruce Anthony Davis.

Q Where do you reside?

A I live in Draper, Utah.

Q Do you have a family?

A I have a wife and two boys.

Q And what is your age?

A I'm forty-five.

Q What is your current occupation?

[25] A I work for the law firm of Larsen, Kirkham and Turner, and I am the assistant to the senior partner of that law firm.

Q Do you do investigation-type work at that firm?

A Yes, sir, I do.

Q Was there a period in your life when you were employed with State Farm?

A That's correct.

Q Were you employed by the automobile company?

A Yes, sir, that's correct.

Q During what time frame were you a State Farm Auto employee?

A As best as I can recall, I was hired by them in the late spring, early summer of 1978, and I left their employ in 1985.

Q And where did you work for State Farm?

A It was primarily in and around the Denver metro area. This would be probably in the area of Lakewood, South Denver.

* * *

[26] Q Was that area of State Farm part of the Mountain States Region?

A Yes, sir, as is Utah and Wyoming, or at least it was at the time.

Q As far as you know, is it still part of the Mountain States Region?

A I believe that those three states are called the Mountain States Region, and they are administered out of Greeley, Colorado.

* * *

[27] * * *

Q Although much of your experience was with automobile property damage claims, did a number of the files you worked on also have bodily injury claims involved?

A Yes, sir, that's correct.

Q Explain how that works.

A As is often the case, if you have an automobile that's involved in a velocity collision, and it's not uncommon for the occupants of that car to also be injured as a result of the collision.

I would be involved, oftentimes, as first contact with these individuals as I'm sent out to be involved in the property damage phase of the claim, as these people and victims may also have injuries associated with the claim.

State Farm had a policy oftentimes of [28] separating where they would have specialists that would deal with the property damage portion of the claim, and then other

specialists that would deal with the victim's body injury portion of the claim. And a lot of times those facets of the job description would meet back and forth to each other.

Q Did you take witness statements that were intended for use with respect to the bodily injury part of the case?

A Almost on a daily basis would I take statements from witnesses, either written, recorded statements that involved, or issues of bodily injury would certainly come up in the natural course of what I was called upon to do.

Q Were you instructed to ask questions about people's injuries and that sort of thing?

A Every time.

Q Did your work involve both first party and third-party claims?

A Yes, sir, that's correct.

Q Explain briefly for the jury the difference between a first-party claim and a third-party claim.

A I'm assuming before I got here today, that they've already bored you with a lot of those details, but first party being an insured, who is eligible for [29] benefits as a result of the contract and/or paying a premium prior to a covered loss.

A third-party claim could easily be someone who is presenting a claim to an insurance company, not necessarily because of a contract, but because they were damaged by someone who was insured with that company. In other words, someone seeking restitution, a claim, where there exists no contract, versus --

Q Let me interrupt you, there. I'm trying to move along. Quickly, would a first-party be where somebody's claiming under their own policy, and a third party is where someone's making a claim who's not insured with the company?

A That's a good short, concise answer.

Q Okay. Did you leave State Farm voluntarily?

A Yes, sir, I did.

Q Did they indicate to you they'd hire you back?

A They made it very clear the day that I left, there are forms and documents that you fill out as you're leaving their employ, and one particular document, my supervisor and his immediate supervisor made it very clear to me, and they filled out a portion of the document themselves that said that they would hire me back.

* * *

[30] * * *

Q (BY MR. CHRISTENSEN) Did you have another job lined up when you left?

A I had sought an opportunity whereby I could, while I was still working for State Farm, I could seek other employment, because I desired to leave, and I knew that. And I, before I left State Farm I had a place to go.

Q Okay. Why did you leave?

A I didn't hear your question.

Q Why did you leave State Farm?

A I'd become, probably the best word is disenchanted with some of the things I had seen over the course of years. I found it more and more difficult, if you will, to daily sing the good neighbor song in my [31] mind, and to hold that company line as I was being asked to do things that were not just on the border of my personal ethics, but I was being, I felt, coerced, cajoled, and whatever, to constantly push the envelope of my own personal ethics.

And I verbalized it to supervisory staff, they knew it, and I left primarily for that reason. Although when I did leave, I left to work for an employer who made me an offer that was better than, financially, than what I was currently making at the time when I left State Farm.

Q Now, let me shift gears. When you were at State Farm, did you ever hear State Farm talk about the number of claims that State Farm handled per year, and if only a dollar per claim could be saved, that amounted to substantial money?

MR. SCHULTZ: Object, Your Honor, leading, no foundation.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Do you recall at State Farm ever hearing reference to the number of claims per year?

A Yes, sir, that's correct. It was the volume that we were handling nationally, and locally, was discussed on a regular basis.

[32] Q Was it ever discussed in the context of, if you could reduce the average amount you paid, what that would mean to State Farm?

A Those kind of comments were generally and regularly boiled down to an issue of money. And oftentimes that boil down would result in a comment that we heard regularly about reduction of costs per claim.

It was nearly daily that this admonition would come in some form or another, either a jingle or a slogan or an admonition or a note from your supervisor, or part of the agenda of a monthly unit meeting where a lot of the staff was brought in and reminded that, "If you can just save a few dollars today in each file, it will equate to millions of dollars of savings on a daily basis. This is a large corporation."

Q How important, from what you observed, was it to your career at State Farm to take the emphasis on average pay per claim seriously?

A In my job performance reviews, it seemed to be the very first thing talked about. It always, as they took you in a room to visit with you one on one a couple of times a year about your performance within your job description, your

ability and performance to reduce their payout in a claims environment seemed to be agenda item one whenever they were talking to you about [33] your performance.

Q Did you observe some methods -- and I'm not suggesting all the methods used -- but did you observe some methods used at State Farm to achieve reduction of average pay per claim that you considered to be unfair?

A Yes, sir, that's correct. Not only did I, unfortunately, not simply observe them, but I was an integral part of that every day.

Q By the way, are you being compensated for your time to testify?

A As this came about, and it became evident that I was going to be involved in this case --

MR. SCHULTZ: Your Honor, I object. This is a simple question, it can be answered yes or no. And I object to him giving a speech about it.

Q (BY MR. CHRISTENSEN) Go ahead and answer that yes or no.

A I refused any compensation.

Q Now, in 1981, did you receive a Cat Team assignment at State Farm?

A Yes, sir, I did. It's a nickname, or abbreviation for catastrophe team, and they selected me out and offered me an opportunity to participate in an elitist claims team that's nicknamed the Cat Team.

Q What was the catastrophe that you were [34] assigned to?

A It was a catastrophe that had taken place in Pueblo, Colorado in and around August, 1981 that involved a couple of tornadoes and grapefruit-sized hail.

Q Did you observe and/or participate in claims settlement practices as part of that catastrophe team --

A Yes, sir --

Q -- that you felt were unfair?

A Yes, sir, I did, and a very large volume of it.

Q Did this, at least to some degree, involve the use of appearance allowance?

A Yes, sir, it did.

MR. SCHULTZ: Your Honor, for the record, again, I want to make sure my objection is clear on relevance on this, lack of substantial similarity. 403, 406, 404.

THE COURT: Counsel, would you approach the bench?

(Side bar conference held out of the hearing of the jury.)

THE COURT: The court will allow counsel a standing objection as to relevancy under the rules we've stated, and I will allow counsel to proceed with this [35] line of questioning.

Q (BY MR. CHRISTENSEN) And Mr. Davis, I should make sure that you understand, you should confine your response to automobile claims, or claims involving some sort of mobile vehicle.

Was appearance allowance used as part of this catastrophe team approach to settlement of claims in the Pueblo, Colorado catastrophe?

A Yes, sir, it was. Along with an admonition to focus on certain groups of individuals in this appearance allowance form of cost per file reduction.

Q Okay. Before we talk about the specifics on appearance allowance, you've mentioned instructions to focus on certain groups. Would you describe what those instructions were?

A Yes, sir. In a catastrophe scenario, tornado and hail takes everybody out, regardless of their income or status or gender, it's no respecter. It'll take out a whole neighborhood, it doesn't really care what you make, or how much you've got in the bank, or what you drive, or how old you are.

But yet, as those groups would come to us to have their damage compensated, by nature of the contract of insurance they had with State Farm, I received counsel to focus on certain groups more aggressively on [36] the issue of appearance allowance than others.

Q What were those groups that you were instructed to focus on?

A One of the groups in particular was fixed income, retired age group, and I remember that specifically. I even remember some of the comments that they would make to keep us focused on that style of claims handling.

I remember counsel being received that if someone came with a motor home where the aluminum skin was badly hammered from hail, and they even went so far as to tell us if the motor home had decals of maybe a trout or a salmon or an elk or a deer applied to the side of the motor home, and it appeared to be a well maintained but older motor home, and if the owner of that motor home appeared to have gray hair or no hair, that we were to utilize aggressively appearance allowance.

Q Did you understand why that group was being targeted?

A They outlined that it was a group that, given that time in their life, and maybe their fixed income status they would be more apt to grab a check and run. Also, too, they would be less apt to put the vehicle under repairs, which meant they were going to pocket the [37] check anyway, in their minds, so there was no harm in low balling these particular groups, and it was discussed on a regular basis.

And I testify the comment about the decals, and whatever, was indeed dialogue every time. Today, even now, when I see a motor home or a camper trailer on the back of a truck or being towed, if it's got the decals it brings back the memory of that counsel that I received. And I found it repugnant.

Q Any other groups that you were instructed to target?

A Outside of the catastrophe team, too, I was counseled to be mindful of those who were financially tight, young couples, recently married, you know, first mortgage, single mothers, those individuals who maybe had been victimized in an automobile accident, their car was damaged, and they themselves, as a victim, didn't have collision coverage with their own company.

So that as they were coming to State Farm, who had insured the person who caused the accident, I was to find out if, indeed, we were their only option. And if that was the case, I was to take advantage of that situation also. Not only on estimatics of their damage, but also in the total loss of the vehicle in the event it wasn't repairable, but also on issues of [38] providing them a rental car, yes, no, that kind of thing.

Q Okay, let's get back to the issue of appearance allowance, as it was used in the Pueblo catastrophe. What did you observe and/or participate in with respect to the use of appearance allowance which you felt was unfair?

A There are a couple of things that I felt wrong. Number one, there was an active competition that was nurtured and cultivated by State Farm at the catastrophe team that I attended as to how much savings you could generate as an adjuster. And they made it very clear that you were in competition with colleagues like yourself, who were there.

We had to keep records as to how many times we had talked someone into an appearance allowance in lieu of giving them a check equal to the actual damages. And a running tally was kept, and at the end of the ten-day period that tally was compared. Although, because of the competition, that tally was almost compared sometimes every couple of hours as we'd crisscross, and adjusters who were estimating damage were actually in competition as to how much they could gouge the policy holders of Pueblo, Colorado.

I participated in that, I observed it, I was [39] an active part of it, and I understand from dialogue since then, while I was still employed with State Farm --

MR. SCHULTZ: Your Honor, I object. Mr. Davis, excuse me, please. I object to him testifying of things he's heard later, the grounds of hearsay.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Let me have you explain, Mr. Davis, the concept of appearance allowance.

A Can I approach to use that, or do you want me to do that from here?

Q If you would like to -- Let me write it, it may be a little quicker. There was testimony yesterday from Mr. Kingman that that's only used rarely, and it's used for things like scratches on bumpers. Was that the way it was used in the Pueblo, Colorado catastrophe?

A I would have to take the position that that's a lie, and it was used on a regular basis, and I saw it used to the tune of a quarter of a million dollars in a ten-day period.

Q All right. Explain to me how it was used in Pueblo, Colorado. And could you give us a specific example? That would probably help us.

A In the interest of brevity, I think that [40] would be the best way to go. In your mind, picture yourself coming to the claims office that's a temporary setup operation, and your motor home with an aluminum skin has been badly hammered in the event of the hail.

When you arrived you're going to have busted plastic vents on the roof of your motor home, the impact of the hail to the top of the motor home may have distorted the metal roof to the extent that it's broken the seals so that if it's left unchecked you're going to have water damage inside the motor home that you may not see for six months later.

But yet you're at a time in your life where maybe the motor home is to do some weekend fishing, and maybe you've got the misfortune of showing up and running into me, and you've got one of the decals stuck on the side of your motor home, I'm going to approach you as to whether, with an approach like this. This was dialogue that I was taught, this is dialogue that was almost a canned.

I would say, you know, endear myself to you with niceties and a handshake, and say something like, "You know, a lot of the local body shops for the next several years are going to be tied up with business. And if you put your vehicle, put your motor home under repair right, now the first thing they're going to do is [41] strip the aluminum, and it may sit for some time until they can acquire fresh aluminum skin and reapply it, and your unit may be down for six months to a year, that may involve a couple of seasons of outdoor activities.

"But if you're willing to accept an appearance allowance for the hail dents that are on the side of your motor home, if you can live with the dents, I'll make you an offer, $375 appearance allowance. The check will be made directly to you, we will not put the lien holder's name on the check, because I see that you've got it financed through First Security Bank, we'll circumvent the lien holder, the check will be made directly payable to you.

"Furthermore, to secure the unit I'd be happy to pay for the replacement of all the broken plastic vents that are up top, including I'll buy you a new motor for the fan in the bathroom, and I'll also pay to do what's called a cool seal, or a silicone seal, the entire top so we make sure that any of the seams that could possibly leak are properly taken care of, and I'll take care of all that for you, and you can continue to use your unit, not have your retirement activities interrupted, and how does that sound to you? Would you find that comfortable?"

And I'm telling you, 30 percent of the time [42] people would say, "Wow, you're terrific, would you do that for me?"

I'd say, "You bet, come in and follow me." I would take you into the temporary claims office, I would introduce you to someone with draft authority, I would write a quick estimate on the plastic components, which I obviously had most of them by memory because I'm doing estimates fourteen hours a day, every day for ten or twelve days, and most of the prices became up here. And if you're off a buck or so, it didn't matter, most of the shops would cover you, there.

Q Okay, let me stop you there.

THE COURT: Mr. Christensen I think we're going to have to recess now for our probate calendar.

MR. CHRISTENSEN: Okay.

THE COURT: Ladies and gentlemen of the jury, we'll be in recess, let's shoot for 9:35, take a break until 9:30 then come back and we'll let the bailiff, we'll let you know how we're doing.

I'll admonish you, as I have before, not to discuss the case among yourselves, not to form opinions about the case at this time, not to communicate with anybody about the case, and not to begin your deliberations. We'll see you back here in about a half an hour.

[43] (The jury left the courtroom.)

(Brief recess.)

THE COURT: We're back on the record. The jury's returned to the courtroom, and counsel and the parties are present. I think we're hearing the testimony of Mr. Davis.

MR. CHRISTENSEN: Yes.

Q (BY MR. CHRISTENSEN) When we took a recess for the probate calendar, I was about to have you explain appearance allowance, and how that was a cost savings for State Farm. Using a specific example of a motor home, as

you described, what would be a typical estimate to repair hail damage on a motor home? Can you give me a figure?

A Let's say you've got grapefruit hail, and you've got a twenty-footer, it's not a fifth wheel, the average, it doesn't take much, it's aluminum skin, plastic components, $3,000 wouldn't be unreasonable. And keep in mind, whatever the hail didn't get and cause damage, then sometimes the tornado that has a lot of debris, air borne, is throwing it at the side of these vehicles, sometimes in excess of 100 miles an hour.

Q Okay, so if we just picked $3,000 as a figure for an illustration, and what would be a ball park appearance allowance for a motor home like you're [44] describing?

A If it was the scenario similar to what I described before break, it was a good unit, but maybe not model year, a little bit older unit, and the owner appeared to be in the category, socio economically and age bracket that I described earlier, I would probably start out with appearance allowance in the range of $300, and I would also, to help lock that sale, would offer to replace the components that were obviously damaged, were broken, plastic was on the roof of the unit, or down inside of the unit, having fallen through the vent holes, and then I would also offer what was called a cool seal, which is just a silicone based seal of the top without doing any repairs, just basically seal the top. So it would be $300 --

Q $300?

A I would probably start out with an appearance allowance of $300.

Q What would you typically give? Would you normally give a little more than that?

A It was surprising to me how many said, "Fix my vents, give me a cool seal, I'll take 300 bucks, where do I sign?" Many of them, not knowing their options, would say okay. I mean they were coming to the good neighbor. They weren't expecting this game.

[45] Q Okay. So say $300 cash for illustration. What did the cool seal cost?

A I'm trying to remember. They had contracted with local shops, and when I say they, I mean State Farm had contracted with local shops to be able to provide the cool seal application at a reduced rate because of the increased volume. And we were actually giving business cards of local shops that had already been approached by State Farm management who would be willing to provide the cool seal at a price below the market rate, because of State Farm's volume influence.

Q Can you ball park that for us?

A I recall it being somewhere in the neighborhood of 75 bucks.

Q Should we say 100?

A Sure. And then there would be some plastic components, and these are plastic vents that would be, you know, somewhere between, at the time -- this is 1981 -- you know, ten to twenty bucks a hit. And the average unit would probably have maybe three of those damaged, so you're looking at probably no more than fifty bucks in cracked plastic that needed to be replaced.

Q So should we say 100 bucks for those?

A If you want to be very conservative, yeah.

Q Okay. So the person that accepted the [46] appearance allowance under our example would end up with a total of $500 in value?

A The estimatics would come out 500 in value, but per your illustration at least 200 was going to the repair facility, and 300 would go into their pocket. And oftentimes they would have me write an estimate that was representative of the 200, and they would hand them an estimate that they could use at the shop like a purchase order, or sometimes

they would just write them a 500 dollar check that was commensurate with the bottom line of the estimate that I'd written.

Q What, under the State Farm policy, what was the policy holder entitled to under our example?

A All a policy holder had to say, or to verbalize, was that he was rejecting my offer of appearance allowance and, "Mr. Davis, simply write me an estimate equal to all my damage and then cut me a check commensurate and equal to the bottom line of your estimate, and I'll be happy."

Q And what would that be under our example?

A Well, it would be 3,000 bucks.

Q So they're entitled to amount- -

A These people lived in tornado alley, they're already paying premiums that were in line with where they lived. And they were already being rated for [47] living in tornado alley, and they were paying earnest premiums, and some of these people have been insured with State Farm for twenty and thirty years.

MR. SCHULTZ: Your Honor, I'm going to object to this. There's no foundation that this is representative of anything. He's trying to make generalizations, and I object to it on the basis of foundation and move to strike.

MR. CHRISTENSEN: You need to listen carefully to my questions and answer those, and I think this will move a little more quickly, Mr. Davis.

Q (BY MR. CHRISTENSEN) If the policy holder simply said, "I want the full amount of my repairs," were they entitled to a check for this amount?

A Yes, sir, they were. And by nature of the insurance contract, they were. But many of them did not know that was their option, as giving them the pitch on the appearance allowance.

MR. SCHULTZ: Your Honor, I object again. He's making generalized statements, no foundation.

MR. CHRISTENSEN: Listen to the questions.

MR. SCHULTZ: I move to strike.

THE COURT: Sustained and granted.

Q (BY MR. CHRISTENSEN) Did the policy holder actually have to go get the vehicle fixed to be entitled [48] to this?

A No, sir, they did not.

Q Now, did you tell people, "I can give you this, or you're entitled to this, which do you want?"

A They would not let me say that.

Q Based on your experience, would you expect a policy holder that knew they were entitled to this, to accept this?

A Not anybody I know.

Q Now, we have a difference, here, of $2,500 in our example. Was there, at the Pueblo Cat Team, was there a running score kept of those $2,500 differences?

A Yes, sir, that's correct. And it was competition among the adjusters as to who would gouge the most.

MR. SCHULTZ: Your Honor, I object to the characterization made by the witness, under 403, and move to strike.

THE COURT: I'm going to grant the motion and ask that that answer be reframed.

Q (BY MR. CHRISTENSEN) Don't use the term "gouge." Does this figure represent an amount the policy holder was entitled to but didn't get?

A Yes, sir, that's correct.

Q Let's call that shortage. Does that sound [49] like a better term? Were those shortages what the contest was about?

A Yes, sir, that's correct.

Q Did someone at State Farm keep track, during this ten days or so that you were at the Pueblo disaster, of each person's shortages?

A They provided us with, actually, a log that had columns on it, and we kept track of a lot of our own performance in that regard, and it was reviewed in the course of the catastrophe team experience, sometimes hourly, sometimes daily. And of course it was discussed among us because we were in competition.

Q How much was your total of these shortages at the end of the -- When I say ten days, is that about right? Or am I wrong on that?

A The catastrophe team was operational for ten days in 1981, in August in Pueblo, Colorado.

Q How much was your total of shortages after ten days?

A I did not win the competition, I was number two, with a figure of $110,000 savings, myself personal, over no more than a ten-day period.

Q Do you recall how much the total shortages were of the person that won the competition?

A Yes, sir, I do. He was more than glad to [50] tell me. He beat me by $30,000 and his figure was $140,000 of shortage during that same time period. I worked beside him every day, we began our day together, we had breakfast together, we had supper together, and he told me what his tally was every day in comparison to mine, and obviously he told me what his tally was at the end of the period.

Q Okay. So the two of you total $250,000. Were you the only two that were participating in this cat team?

A To the best of my recollection there were at least three others that were there on this site where I was. And then there were several others that were freelance into town who were estimating units that were damaged beyond their ability to get to where we were.

Q Okay. Did you have an understanding whether or not State Farm placed importance on getting to a catastrophe site early and quickly?

A Yes, sir, that's correct. They made it very clear that it was important to them to be there fast.

Q And did they explain why?

A Yes, sir, they did.

Q And what was that explanation?

A There were several. There were at least three explanations I remember hearing regularly.

[51] MR. SCHULTZ: Your Honor, could we get some foundation on this, when, who said it, and where?

THE COURT: The objection is sustained, lay the foundation.

Q (BY MR. CHRISTENSEN) Explain, when you heard these explanations, who you recall hearing them from, and the approximate time frame.

A The Pueblo, Colorado catastrophe team experience was my first one. This was August, 1981. Prior to going, I received instruction from two or three individuals who would have been my superiors. And each one throwing in their own two cents before I'm scheduled to go off and become a member of the catastrophe team, my first-time experience.

Q Okay, and what were you told as to why State Farm felt it was important to get there fast?

A I won't deny that one of their motives was to get there quickly, and it was discussed, one of the motives was to service the policy holders. But they also made it clear to me that it had been their experience that the quicker they get there, if they can be the insurance company with the adjusting team that's making offers, if they can get there before the other insurance companies get there, then the victims don't have a comparison, and you're able to beat the [52] comparison game.

An example, if I might. Two houses side by side experience the same damage from this catastrophe.

Q Let me stop you there. The court has limited us to talking about automobiles. Can you use automobiles as an example?

A I'd be happy to.

Q Okay.

A Two automotive vehicles side by side in the driveway of two homes that are adjacent to each other that are exposed to the exact same tornado and hail. One neighbor is insured with State Farm, the other one's insured with Back Alley Mutual without the power and the means to get there as quickly as State Farm could.

One guy might get an appearance allowance from State Farm for $500 and his case closed and it's over and done with. Two weeks later the insurance carrier for the neighbor gets there, and he gets $1,000 appearance allowance for nearly identical damage. That obviously creates heartburn for the adjuster representing the second company to try to do an appearance allowance for 300 when he says, "Well, my neighbor got five." And I do know the same thing happened regarding roofs and other dwellings, and it was to their advantage to get there quickly.

[53] MR. SCHULTZ: I'll object and move to strike any comment regarding non-automobile.

THE WITNESS: I'll try to keep it to auto.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) All right, let's move on.

A There was a third reason that I did point out. State Farm would also have a production team, a movie production team that would follow us, and they would video our presence on the scene, and then it would oftentimes be provided to local media, or it was used for training and that type of stuff.

Q I'm going to put on the screen a letter that was sent to you by State Farm after your Pueblo catastrophe team experience. We're not going to take the time to read that, I think it's easy for the jury to see and read. I'll identify it as August 24th, 1981 from Lee Norman to you? Who was Lee Norman?

A Lee Norman was the individual who was in charge of the entire catastrophe team experience in Pueblo, August, 1981.

Q I'll show you a second letter -- And by the way, are these documents that you've provided to us? That letter we just showed, and this second letter?

A Those are documents I provided in response to [54] the subpoena.

Q Subpoena you received from our office?

A I believe it was a subpoena I received from defense.

Q Oh, for your deposition?

A Yes, sir, that's correct.

Q Who was Richard Caine that wrote this letter of August 31st, '81 to you?

A Mr. Caine, I believe, at the time, was Mr. Norman's supervisor. What you're seeing here are congratulatory letters from up the leadership food chain, given my performance on the catastrophe team.

Q From what you observed, was it good for your career to have taken second place on the appearance allowance savings contest?

A Yes, sir, it was.

Q At some point in time was there a banquet where you were honored for that?

A Myself and others, that's correct.

Q Did you receive a reward for placing second and saving the company $110,000 over those ten days?

A Yes, sir, that's correct.

Q What did you receive?

A I received a State Farm beach blanket. It's polyester, approximate cost about seven bucks.

[55] Q Did you keep that blanket for a period of time?

A Yeah, I did.

Q And why did you do that?

MR. SCHULTZ: Object, irrelevant.

THE COURT: Overruled.

THE WITNESS: Thank you. I kept the blanket for a long time, folks, because I wanted to keep it as a reminder, even after I left State Farm, of a time in my life when I allowed a corporation to push me and take advantage of me to the extent that I was willing to compromise my integrity to the damaging of a lot of people. And I kept it for many years. And my wife asked me every time she did spring cleaning why I kept it --

MR. SCHULTZ: Your Honor -- Mr. Davis. I think you understand how a courtroom works. When I make an objection, would you please let me do it.

THE WITNESS: I'll try to be more respectful.

MR. SCHULTZ: I object to him going into statements about what his wife asked him, Your Honor.

THE COURT: Sustained.

MR. CHRISTENSEN: I think you've answered the question. We'll move on.

Q (BY MR. CHRISTENSEN) Did you refuse after [56] that to go on more cat team assignments?

A It was offered to me numerous times, and each time I turned it down, and I explained to them why.

Q Okay. Apart from the cat team experience that you've described, I want to talk about methods over that, what, were you with State Farm about seven years?

A Yes, sir, that's correct.

Q We've had State Farm witnesses in this case who have or will testify that appearance allowance is not emphasized, and it's rarely used. Aside from the cat team experience, was that true of your experience at State Farm?

A Yes, sir, that's correct, and it was daily, and I've already provided a whole stack of documents to show that.

Q All right, I'm going to show you --

MR. CHRISTENSEN: Maybe we could make a record on that. Mr. Davis has provided us with documents that he had kept from his State Farm experience. It's my understanding State Farm objects to relevance, but does not contest authenticity.

MR. SCHULTZ: Yes, Your Honor, we object on all the same grounds that we object to this witness in general. And we would renew that objection with respect to all the documents.

[57] Q (BY MR. CHRISTENSEN) Let me show you, Mr. Davis, what's been marked as Plaintiff's Exhibit 66. You've had a chance to look at those. Are those accurate copies of the documents you've supplied us?

A Yes, sir, that's correct.

Q Are those all documents that you received as part of your employment while you were at State Farm?

A Yes, sir, that's correct. And most of these, if not all of them, do not pertain to documents I received in the catastrophe team, they were daily issue documents.

MR. CHRISTENSEN: What I would propose, Your Honor, as we go through these, I'll have him explain the relevance, and perhaps at the end we could move for their admission and the court could rule on it.

THE COURT: All right.

Q (BY MR. CHRISTENSEN) I'm going to show you first, Mr. Davis, a document entitled "office memo," and it's dated January 8th, 1982. I've prepared a transparency of the first page of this document.

A Can I have it a little closer? I'm not as young as I was when this document was first given to me.

Q Sure. Is that a document that refers to the use of appearance allowance as far as your expected performance at State Farm?

[58] A Yes. And it also denotes that it was at the claims office where my desk was, and paragraph 1 also separates out the fact that my shortage competition at the Pueblo claims in August is specifically excluded from my shortage instructions at the claims office, which is my regular job when I'm not out of town.

MR. CHRISTENSEN: Your Honor, I think we've laid foundation for relevance. May I put this on the screen?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) Now, is this a review of your PP&R?

A Yes, sir, that's correct. That's one of the forms that were used, that's not the only one.

Q Okay. And I think the jury has an understanding of the PP&R program. Let's look at paragraph 1 on this document. Let me read the first sentence, "From June 1 through December 31, 1981 you have achieved savings of $2,734 in the area of appearance allowances, which computes to an average of $546.80 a month. Although seven months are included, the average is based on five months, due to the fact that you were on storm duty for the month of August and in claims school and cross training for the month of November." Is that storm duty, is that another term for [59] the cat team?

A Yes, sir, it is. He's talking about the Pueblo, 1981 August catastrophe team that took me out of the office and had me living in Pueblo for ten days.

Q And is this written to you from Gary Dawson?

A Yes, sir, that's correct.

Q Who was Gary Dawson?

A At that time he was my immediate supervisor.

Q He goes on to say, "You are well above the goal of $100 per month." Was that your goal that you'd set with your supervisor of $100 a month of appearance allowance savings?

A Actually that's the goal that my supervisor set.

Q "But I do see some concern in this area. A major portion of your savings were in the months of June and July, which were the hail months, and which tend to distort figures." Let me stop right here. Now, you've mentioned you saved $110,000 on appearance allowance savings, or we have been using the term shortages, in ten days in Pueblo, Colorado. Are those figures included in this?

A No, sir, they're specifically excluded.

Q Did you ask if you could include those figures to meet the goals that have been set for you?

[60] A There was also competition in the office, and I had asked if not my, could not my appearance allowance performance on the catastrophe team be blended into the same admonition that I was getting on a daily basis at my office? And they told me no, and this document affirms that, my performance in August on the catastrophe team is specifically excluded from what they wanted me to do on a daily basis in the office.

Q All right, now, do you see the sentence that says, "A major portion of your savings were in the months of June and July, which were the hail months." Does that sentence refer to the Pueblo hail, or other hail?

A That refers to other hail losses that were not catastrophic that happened in the neighborhood in and around the claims office in South Lakewood, Colorado.

Q Let's move to the last sentence of paragraph 1. "You have not realized any appearance allowance savings since October 1, 1981, and I would challenge you to strive to meet your $100 per month goal for the remaining six months."

Was there a tendency, from what you recall of your State Farm experience, to encourage you to do more, even if you'd exceeded your goal?

[61] A They were never satisfied. And one of the things reflective in that last sentence is, upon my return from the catastrophe team in the tail end of August, I had, and was losing my stomach for playing the appearance allowance shortage game.

Q Okay.

A My figures were dropping.

Q Okay.

A But I was still well above my goal, and they still weren't satisfied.

Q Let's move to paragraph 2. It goes on to say, "Your cost savings in equivalent parts total $13,331.48, which averages $2,666.30, which is exceeding your goal of $2,000 a month." What does that term "equivalent parts" refer to?

A That was their nice term for junk parts that were bought from junk yards and bolted on the damaged cars.

Q As in the area of appearance allowance, it says, "Your performance was strong in June, July, and September, but has fallen off in the months of October and December. In October you had savings of $1,964, and in December, $1,751. Your overall goal is okay, but I would challenge you to concentrate in this effort also for the remaining months."

[62] Was the use of, quote, "equivalent parts," emphasized as a way to reduce average pay per claim?

A Yes, sir, every day. I was provided with business cards, phone numbers, catalogs, hot lines, and phone numbers to junk yards all over the mountain west, and I would call as many as ten or fifteen times a day in that regard.

Q Would you tell the people whose cars were getting parts from salvage yards that that's what they were, that's what was being used to fix their car?

A They instructed me to use the words "equivalent parts" or "LKQ," which stands for like kind and quality. Those are industry, that's industry verbiage. A lot of people were getting used parts, and the feedback they gave me at the time that I handed them the estimate, they were not clear.

MR. SCHULTZ: Your Honor -- Mr. Davis -- I object to him testifying what people were saying to him, that's hearsay.

Q (BY MR. CHRISTENSEN) Let me ask you this. Based on your observations, were you able to tell whether many people knew what LKQ parts meant on an estimate?

A Many of them had no idea.

MR. SCHULTZ: Object, speculation.

[63] THE COURT: Overruled, I'll allow him to answer it based on his observation.

THE WITNESS: As my estimate was being handed to a State Farm policy holder, a State Farm claimant insured or a State Farm claimant, I was told to give them an explanation, should they raise any questions.

From the questions they raised, many times it was evident these people didn't have a clue what LKQ meant, or an equivalent part meant, and I was instructed not to tell them unless absolutely painted into a verbal corner that the fender's coming from a junk yard and it's going to be transported to the body shop to be bolted to their automobile.

Q Now, besides using parts from salvage yards, were you also encouraged, as a way of reducing average pay per claim, to use, quote, non-OEM parts?

A That was a drum beat that happened daily. The non-OEM parts means that it's a part that is not produced by the, actually, manufacturer of the automobile. So if you have a Chevrolet where the right fender is dented in, they're going to direct through my estimate to bolt on a Chevrolet fender that was produced in Taiwan or Korea, with reduced quality, integrity and rust prevention.

Also, too, there was a [illegible]when we went from [64] handwritten estimates to computerized estimates, and we went from using the word "equivalent parts" or "LKQ" parts to actually a computer code wherein only the estimator creating the estimate knew the code. And there was sometimes an explanation down below, but oftentimes difficult to read and difficult to understand.

So you actually could see a bottom line figure on your estimate, but it was a computerized output, and a lot of people, as computers were becoming more vogue, a lot of people didn't understand it. And it was like, it was like getting a secret message in the cereal box, but they forgot to include the decoder ring, and people just didn't know.

Q When people did ask about these non-OEM parts -- And were these parts often produced in places like Taiwan?

A I remember the catalog that I was provided by State Farm represented parts, at the time, were all produced outside of the country. And not to say stuff produced outside of the country is subquality, but I knew from my own experience and my own automotive degree, and having actually seen and handled these parts, that they were, indeed, subquality.

Q What was the concern about some of the parts [65] you saw? When you say they're subquality, what was inferior about them?

A Thank you. The gauge, or the thickness of the metal was oftentimes not the same as the original part from, say, Chevrolet or Ford or Chrysler. Furthermore, it became

evident, as I visited with the body shops -- Do you want to jump up for hearsay? I did get the high log back from the body shops that these parts were rusting and customers were complaining.

MR. SCHULTZ: Your Honor --

THE COURT: Okay.

MR. SCHULTZ: Objection.

THE COURT: Sustained.

THE WITNESS: I didn't know how to say it. We've got a rust issue, a metal gauge issue --

Q (BY MR. CHRISTENSEN) How about fit?

A Fit was another issue, and it was even joked about often in the claims office. You'd get the fender, and it was produced 10,000 miles away, the fender would get there, and sometimes the mold that they had used to create the fender, they had maybe used an original fender, so they're molding on the outside of the fender, in which case the fender becomes a little larger, or they're molding on the inside of the original fender, in which case the fender is a little smaller.

[66] And I started seeing folks come to the claims office with a complaint, and I'd stand in front of the vehicle and I'd look and the fender that had been replaced per my estimate, looking straight on, was actually smaller than the fender on the other side of the car, not just a lighter gauge.

And I mentioned it to management several times that these were subquality parts, but sometimes the savings, and I had the cost, wholesale, retail catalog in front of me, the cost savings was sometimes 65 percent on these parts instead of putting on an original component.

Q Okay.

A There was also a display, State Farm produced a display in the claims office that I was in, it was mounted on the wall in the garage that was there at the drive-in claims office. And there was two large displays in my office, it was a

General Motors grille and a non-General Motors, Taiwan or Korean grille, it had a headlight trim, it had a bumper and maybe a couple of other pieces of molding.

And the identical components from Chevrolet were mounted on a board directly beside it, it had a big sign over it, a sign said, "Can you tell the difference?" Question mark. And it was mounted on the [67] wall to help the estimators sell non-original parts to people coming to the claims office, be them insureds, claimant insureds, or claimants.

But what was happening as that part of the office wasn't heated as well, and the doors are often open, and we were in Colorado, those components are getting exposed to elements. And over a period of about eighteen months, suddenly the non-original parts were rusting and pitting, and color was fading, and the chrome was becoming tarnished or whatever.

And it became a joke in the office, because people would come in, and total strangers with little or no background in automotives would stand back and say, "Hell, yeah, I can tell the difference, and I don't want any of those parts." And they eventually took down the display.

Q Okay.

A On the issue of fit, as you would take -- Sometimes you would take one of these fenders and you would attempt to bolt it up to the automobile, but the holes designated wouldn't line up. And you'd have to twist and bend and move and shove, and they still wouldn't line up.

And there was a lot of complaints about that, and there was a joke in the office that was talked about [68] from the lunch room all the way through, that maybe instead of giving out State Farm pens to the people who were being victimized by these parts, maybe we ought to hand them all rat tail files.

MR. SCHULTZ: Objection, Your Honor. Mr. Davis -- Objection, Your Honor. I'm going to object to him giving

speeches, Your Honor. They're simple questions, and he injects his own gratuitous comments, and I object, and I'd move to strike that.

THE COURT: I'm going to sustain the objection. I think we should proceed by a tighter question-and-answer format, here, to allow the interjection of an objection.

Q (BY MR. CHRISTENSEN) Mr. Davis, I'm going to show you a page from your next PP&R, and I guess we need the prior page to put a date on it. Is this a copy of your PP&R from June 22nd, 1982?

A Yes, sir, that's correct.

Q And does this page -- I'm referring to paragraph 5 -- treat the subject of appearance allowance, cost savings, use of equivalent parts?

A Yes, sir, that's correct.

MR. CHRISTENSEN: May I put that on the screen, Your Honor?

THE COURT: You may.

[69] Q (BY MR. CHRISTENSEN) Now, let me direct you to paragraph 5. It says, "During the months in which Bruce will serve as an estimator, he will continue to concentrate on his cost savings efforts." Does cost savings in this context refers to what, Mr. Davis?

A It refers to reducing cost per file through the utilization of selling equivalent parts, as I previously described, appearance allowance, shortages, as I previously described, the use of depreciation, and plastic repairs.

Q Let me move, now I'm going to show you one more PP&R. Is this from June of 1981?

A Yes, sir, that's correct.

Q Would this be the prior year?

A Yes, sir, that's correct.

Q Does it treat similar subjects?

A Nearly identical.

MR. CHRISTENSEN: Can I put this on the screen, Your Honor?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) I'll quickly read these two paragraphs. "Bruce has not been properly using appearance allowances, and has set a minimum goal of $100 per month in this area. Followup in six months."

And number 2, "Continue good effort in cost [70] savings utilizing used parts. His goal is to average a savings of at least $2,000 per month. Follow up in six months."

Now, when it talks about savings, did State Farm keep track of the difference between what new parts would cost and what the used parts cost?

A Yes, sir.

Q And the difference, the savings of $2,000 a month that you had the goal for?

A In category 2 of the PP&R document, that represents my savings per month in hanging used parts, or hanging used and junk parts on an automobile, that's correct.

Q Now, were there actual monthly reports kept in your office setting forth the different claims adjusters and how they were doing in cost savings?

A It was part of the competition.

Q I'm going to show you one dated February 1st, 1982. Does that treat these same issues?

A That reflects that not only was there competition in these areas on a catastrophe team, but the competition also existed every day in the office.

MR. CHRISTENSEN: May I put this on the screen, Your Honor?

THE COURT: You may.

[71] Q (BY MR. CHRISTENSEN) I refer you first to the top of the report. Do you see where it says "cost savings report, unit 160"?

A Yes, sir.

Q Was that the unit that you were assigned to?

A Unit 160 was a numerical designation of the office I worked in at the time of this memo.

Q And are the different claims people in that office listed here, by name?

A Those are the people that I worked with every day.

Q Let's read this, if we can, please. "The following is a record of each appraiser's savings through the use of equivalent parts," again, that term, "savings," is that the amount State Farm was saving by these devices, rather than by using new parts, or paying the full amount instead of appearance allowances?

A Right. When they're talking about savings, there, they're talking about the money that might otherwise have gone in the pocket of the policy holder, and that is through the utilization of junk parts, non-original equipment parts, yes, sir.

Q And this figure, right here, represents the savings among four claims representatives for the month of January, 1982?

[72] A That's one month's savings for four individuals on the team in this competition.

Q Okay, let's read this paragraph. "Unit 160's total savings increased 30.4 percent in January, 1982, as compared to December, 1981. Improvements were made in all four savings areas. The average savings per estimator was $5,540.40. Bruce Davis --" I assume that's you?

A Yes, sir.

Q "-- made a significant improvement in his savings as compared to his results the last few months, and he is to be congratulated." It goes on to say, "This is by far the best month we have had except July, which was influenced by catastrophe appearance allowance."

Then let's go to the last sentence. "Our combined total savings from September 12, '80 through January 31, 1982," that looks like, what, about a year and three months? "is $234,189.93." Again, did that include the catastrophe savings?

A That document reflects that I'm winning the competition, and from the previous document we know that it excluded my performance in August of 1981. Had my performance in 1981 been included, obviously I'd be off the charts.

[73] Q All right. Let's talk about a couple of other areas. What about depreciation? How was that utilized?

A Depreciation would generally show up where, oh, someone's had a stereo stolen out of the dash, and if it's a three or four-year-old stereo, I can't, maybe, I'm going to be unable to locate a three-year-old stereo to bolt another one back into the dash, and we would certainly provide them a new stereo, and rightfully so. They should pay a reasonable amount of depreciation for having received a new stereo in exchange for a three-year-old one having been lost or stolen.

Q So is taking a depreciation, as a concept, is that wrong?

A I believe in the concept of depreciation. Where I had difficulty is that what they wanted me to get sometimes in the way of depreciation is whatever the market would bear.

Keep in mind, I'm being counselled, and I'm using my own words, to prey on the weakest of the herd, here. And if there's someone who is of a socioeconomic appearance of, if some guy showed up in a high buck Mercedes with current model lists, and a $700 Brooks Brothers suit, we were told not to hammer him on these issues.

[74] There were plenty of others that would be easier prey than that particular individual. Also, too, they counselled

me that if he had a big house and a boat and other business with State Farm, was to leave him alone. But if they had minimal business --

MR. SCHULTZ: Your Honor. Your Honor -- Mr. Davis.

MR. CHRISTENSEN: Let me ask a question --

MR. SCHULTZ: I move to strike that. It's irrelevant. It goes beyond the scope of the question.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) All right. We'll come back to that. But let me simply ask this. Were you taught, on depreciation, to take a fair depreciation, or to do something other than that?

A They instructed me in a couple of maneuvers that I was to try, if I felt it could be sold. One of those was if someone had a deductible on their comprehensive coverage, say the deductible was 100 bucks, the stereo was worth 300. The question then becomes, if I'm going to take 20 percent depreciation, do I take the 20 percent depreciation off the 300, or do I take the 20 percent depreciation off the 300 minus the $100 deductible, or the 20 percent off the 200 after the deductible's taken? And I was counselled to try to sell [75] it by taking the depreciation off the gross amount of the claim, not necessarily the net amount of the claim. And I was uncomfortable with that also.

Q Okay. Let me follow up on an area you alluded to. Were you instructed that certain types of people that you shouldn't try to take advantage of?

A Yes, sir, that's correct.

Q What was your instruction in that regard?

A I was to be cautious in pitching these cost savings shortage endeavors on individuals who had a lot of business with State Farm, or who, at my meeting, gave the appearance that they had sufficient funds that they could create grief for us, either by removing their business, or had sufficient funds to retain counsel on an issue if it became uncomfortable.

I was, and I'm using my own words, I was counselled to prey on the weakest of the herd, and that was some of the groups I talked about earlier in my testimony today, and also other groups of different ethnic persuasion that's different than age group.

Q Okay.

A Or fixed income, or whatever.

MR. CHRISTENSEN: I'd like to put up another of these cost savings reports. May I do that, Your Honor?

[76] THE COURT: You may.

Q (BY MR. CHRISTENSEN) And I'm not going to discuss this one in detail, in the interest of time. Is that another example of a cost savings report, this one being for June of 1981?

A Yes, sir, that's correct. With the same players.

Q You've explained a number of methods that were used to take advantage of people. Did any of the people that you -- Let me lay a little foundation. Is this a few people over your seven or eight-year career, or are we talking a lot of people?

A Appointments are being scheduled at the office are such that I'm meeting with someone every twenty minutes, every day, half a day Saturday, for nearly seven years. That's excluding the high volume exposure to policy holders during a catastrophe team, which would sometimes be maybe three times that volume.

Q Over the course of those years, did you take advantage in an unfair way of a large number of people?

MR. SCHULTZ: Object, leading.

THE COURT: Overruled.

THE WITNESS: Yes, sir, I did. And to the tune of an awful lot of money.

Q (BY MR. CHRISTENSEN) Are you aware of [77] anyone, out of all those people, who ever complained to the insurance commissioner about what you'd done?

A I applied for an insurance license in the state of Utah in 1990 --

MR. SCHULTZ: Your Honor, that's a question that can be answered yes or no.

MR. CHRISTENSEN: I think it can.

Q (BY MR. CHRISTENSEN) Can you answer that yes or no?

A I'm not aware of a single complaint. Over a period of over seven years in the state of Colorado.

Q Did anyone ever sue you or State Farm, that you took unfair advantage of?

A No, sir, they never did.

Q Did a number of the people that you took advantage of thank you as you did it?

MR. SCHULTZ: Your Honor, I object to the comment on the evidence by counsel, and it's also leading.

MR. CHRISTENSEN: Your Honor, I'm trying to show lack of knowledge, which is certainly part of this case, in light of the defenses, and reliance by these people.

THE COURT: I'll allow it. Overruled.

THE WITNESS: Let me answer it this way. [78] Sometimes those that would object, I would handle it right there on the spot by simply acquiescing with the offer of appearance allowance, increasing the amount of the appearance allowance to the point where they said yes. Or if they absolutely said no, I simply converted to writing a full estimate and cutting a check.

But there were times, and the times were many, when people felt that they had gotten what they deserved from the good neighbor, they would shake my hand and thank me. And I knew that they had been the victim of a shortage to the tune of a large amount of money.

Q (BY MR. CHRISTENSEN) Let me move quickly to a couple of other areas. Besides the methods we've described, were you trained to, in situations where it appeared that someone would probably not get their car repaired, were you trained how to use a situation like that to reduce average pay per claim?

A Yes, sir, I was instructed in that quite a bit.

Q Would you explain that, please.

A Thank you, I will. If you came to the claims office and you had a car that was older, and if you were in the categories I was instructed to focus on with regards to what I've talked about earlier, I might start [79] off the dialogue by saying, "Gee, it looks like you've got a fair amount of damage, here. Have you chosen a shop where you're going to have it fixed?

"Well, I'm not sure. I've got a little bit of background myself, I've got some tools in my house, I think I'll maybe fix it myself."

It could be something as simple and benign as that, but that was my signal that if this guy's going to fix it himself that I was instructed to write him an estimate that did not include all the damage, and certainly the bottom line of the estimate was not going to be commensurate with full bore retail.

If this guy's going to take it home and pound out the fender and maybe realign the headlight and maybe get him a used bumper or something, my instruction was that he is not to receive a complete, full-bore retail estimate as if he'd -- If he'd simply kept his mouth shut or if he'd dropped a couple of names of a couple of body shops, he would have walked away with more money.

Q Let's move to another area. In the area of totaled vehicles.

A These are vehicles with damage beyond the point that they're worth fixing.

Q Right.

A Okay.

[80] Q By the way, can you give the jury some idea to the volume of totals? Is that a few a year, or are we talking a lot a year?

A My total loss settlement performance, as my career progressed and changed with State Farm, might be as many as fifteen or twenty total loss settlements a week. And we're talking a lot of money.

Q When you settle on a total loss, do you set a value on the car, and is that what the customer, or the policy holder's entitled to receive?

A My understanding of the State Farm policy was that the policy holder was entitled to receive ACV. ACV standing for actual cash value. Meaning simplistically, what the vehicle was worth retail, ten seconds prior to impact.

Q What instructions did you have with respect to the payment of ACV on totals?

A First of all, some of the instruction I received is that those groups that I was to focus on with regards to appearance allowances we talked about earlier, and the other shortage savings endeavors, I was also to focus on the same group, or groups, on the issue of total loss settlements, and attempts to low ball total loss settlements to get the case settled below what I knew to be actual cash value.

[81] Q Was there pressure -- Strike that. Was there a weekly list of total settlements in the office that compared the settlement to the ACV?

A That's correct. The form that went around, every week I had to keep it, and I had to turn it in every Friday afternoon. It had basically three columns on it. And the columns were labeled, below ACV, at ACV, or greater than ACV. I could not ever settle a case, the greater than ACV, without permission from the supervisor.

In my career, I don't remember, I don't remember a dozen times in seven years that I ever settled a case at more than, a dozen times I settled a case at ACV. Most of my settlements were below actual cash value. And that includes my performance with State Farm insureds, State Farm claimant insureds, who happened to be victims who are insured by State Farm and hit by somebody insured with State Farm, and just plain claimants.

Q And was that encouraged, to pay less than ACV?

A I couldn't pay more without supervisory position, and they didn't like to see the middle column too full, either. And it was made very clear that my existence and performance and my pay was commensurate [82] with my ability to settle below ACV. And as they beat the drum on the issue of cost savings per file --

Q Did you receive any instructions about whether you should tell someone they had rental coverage?

A I received a lot of instruction on that issue.

Q And let me ask you a question about that. When someone's car is totalled or damaged, does the issue sometimes come up whether they're entitled to have State Farm rent them a car?

A Yes, sir, that's correct.

Q Does State Farm offer insurance coverage that will provide a rental that some policies have and some don't?

A State Farm offers an endorsement, or a coverage addition that can be added to your policy that, in the event of a covered loss, you can be eligible for a rental car for a certain amount of time, for so much a day, for so long.

Q Were you instructed whether you should disclose that to someone who needed a rental car?

A I was instructed, and this instruction was in place for years, that if someone came to the claims office and I saw -- I could maybe back up a moment.

[83] As I'm meeting with these people I have a computer printout that lets me know exactly what kind of coverages they had in force at the time of the accident. The policy holder's not walking in with the benefit of that. They maybe have a card in their wallet that's not as broad with regards to explanation of coverage, it may just be a string of alphabet letters. And I was instructed that, even though they had a covered loss, if they did not verbalize it, they knew they had rental coverage, I was not allowed to do what they called solicit coverage.

I was not allowed to tell the policy holder, "But sir, you've purchased rental endorsement through your agent when you bought this policy, and while your vehicle is in the shop I can put you in a rental car because you've prepaid for that coverage." I was not allowed to do that.

State Farm used the term "solicit rental coverage," or "solicit our coverage," capital R coverage. And I was not allowed to do that for most of my career, and neither were my colleagues.

Q Let me ask you this. Did you observe situations where it was a hardship on someone not to have a rental car who had rental coverage and they weren't told?

[84] A On a daily basis.

Q Moving to another subject. Did you see situations where an offer would be made for a total loss on a Friday afternoon, where the rental was used as leverage to get a lower settlement?

MR. SCHULTZ: Object, leading.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Are you aware of a practice of Friday afternoon offers?

A Yes, sir, I am, I was schooled in it by State Farm.

Q Explain that, would you please?

A I will. A weekend is typically a Saturday and a Sunday to an insurance company. If I've got an auto accident victim with a damaged car, where the damage exceeds the value of the car, it ain't worth fixing. And these are people who could be State Farm policy holders, State Farm policy holders that were victims, claimant insured, or claimants insured with another company. Their car is in a boneyard somewhere and it's demolished.

And I maybe put them in a rental car on Tuesday. It was State Farm's policy that once an offer was made, that I was to, and their exact words were, once an offer was made I was to yank the rental, [85] Y-A-N-K, yank the rental, because they didn't want to incur the expense of having someone in a rental over the weekend unless absolutely necessary.

Most of my total loss offers took place in the early afternoon of Friday, every week, and so it did with most of the other adjusters. And that was a regular course of business.

You could make an offer at 1:00 o'clock, whether the claimant or the victim liked it or not, I had a set protocol make them an offer, sometimes I'd make them a low ball offer and say, you know, "I've extended my offer. If you don't like it, I apologize, but I've satisfied the requirement, I've made the offer, and furthermore, I can't authorize the rental for the weekend."

They'd say, "Well, that's just not enough money. I'm going to talk it over with my I wife, talk it over to my neighbor, maybe I'll call my attorney." Most of them didn't have one, and I knew --

MR. SCHULTZ: Your Honor, I object again, the witness is making a speech, he's giving hearsay statements, he's speculating on what people might or might not have done, or could have done. I'd move to strike.

MR. CHRISTENSEN: I don't think all that's [86] true, but I'll ask another question.

THE WITNESS: Most of the files I knew were not represented by counsel.

MR. SCHULTZ: I would move to strike, Your Honor.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) What did you observe was the effect of making this offer on Friday afternoon as far as pressure, if any, on the person whose car had been totalled to accept the offer you'd made?

A There was another component to the maneuver. After I hung up from that victim, I would then call the rental company and I would withdraw authorization for the rental. Within forty-five minutes the rental company would then call the victim and say, "I just got a phone call from Mr. Davis, and he's authorized me to come and get the rental."

MR. SCHULTZ: Your Honor, I object to this. This witness does not know what a rental company said to a third person. It's hearsay.

MR. CHRISTENSEN: Of course he does.

THE WITNESS: Of course I do.

MR. SCHULTZ: It's hearsay, I object.

MR. CHRISTENSEN: He's describing the scheme --

[87] THE COURT: I've sustained it as to the form of which the testimony came in.

Q (BY MR. CHRISTENSEN) Okay. When you would call the rental company and withdraw authorization, what was your -- Don't say what the rental company said, say what you expected the rental company to do.

A Mr. Christensen, many times the rental company would call me back and confirm that they had already contacted the claimant --

MR. SCHULTZ: Your Honor, I object, this is hearsay.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) What did you expect the rental company to do, once you called and withdrew authorization?

A It was my expectation that they would yank the rental.

Q And did you observe any effect that had on your ability to get the claimant to accept the offer?

A Oftentimes, in response to whatever dialogue they may have had with the rental company, the victim would oftentimes call back before close of business and accept the offer, and I would be able to fill in the column that I had settled yet another claim below ACV.

Q Okay, let me move to another area. Did you [88] see what you considered to be State Farm using the legal concept of comparative negligence as an unfair claims practice?

A Yes, sir, I did, and I was schooled in it.

Q Explain -- and in the interest of time, be as brief as you can -- explain what that was.

A Even though I knew it was a case of clear liability, or I had evidence before me to establish that the victim was clearly innocent, oftentimes I would be schooled to seek for bits and pieces of evidence whereby I could allege that the victim was partially at fault for their own accident, thereby being able to reduce the offer from 100 percent to maybe an 80-20, alleging that they might have been 20 percent at fault for the accident, and I would oftentimes use their own testimony to me to make that conclusion.

Q Okay.

A Although I might qualify, there were times indeed when the facts did show that there was a comparative negligence scenario, and it was properly presented to the victim. But there are also other times when it did not exist factually, and I still attempted to sell it.

Q Okay. Let me move to another area. Did you observe investigations at State Farm that were oriented [89] to trying to justify paying less, rather than trying to get to the facts fairly?

MR. SCHULTZ: Object, leading.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Did you observe any outcome-oriented investigations at State Farm?

MR. SCHULTZ: Same objection.

THE COURT: Overruled.

THE WITNESS: I observed them in the performance, my own performance in my own files, and I observed them in the performance of the files of my colleagues, yes.

Q (BY MR. CHRISTENSEN) Was there a period of time at State Farm when State Farm started to use Audatex computerized estimates?

A The company's called Audatex, I believe it's spelled A-U-D -- I don't know how to spell it any more either, right. Yes, the answer, that's correct.

Q Explain what that was, if you would, please, briefly.

A Up to that point we were writing our estimates by hand, and a lot of the values that were being placed on line items, either repair, or the part price, or the procedure to remove the damaged part and put on the new part, commonly called R and R of the [90] component in the automotive industry, that was something you had to look up in a stack of manuals that would be three times this high.

State Farm formed a relationship with a company that had taken all the data of repair manuals, I believe they used the Mitchell manuals as their base, and they inputted all this information in computer. And you could access that information by filling out a scan sheet.

It would, a scan sheet would be a normal piece of paper size, it would have the blowup of the automobile on it with all the parts blown out, each part would have a number, and then on the side or the back it would have a place where you could scratch with a number 2 pencil, a lot like a test you might have taken in school, and then you'd feed it to a computer and the computer would give you a final output bottom line of the estimate.

Obviously you could take folks that were less trained in auto damage estimatics, train them in computerized estimatics, and you could have a larger army estimating damage.

Q Were you trained in that?

A I was one of the first, I think I was in the first group trained in the mountain west in that [91] program, and I was hand picked for it because of my automotive background, degree, performance, and so on and so forth.

Q And the Audatex system, was that a company separate from State Farm that had put in a database of part prices and labor prices?

A They had used Mitchell manual, which at the time was the bible for auto damage estimatics. And they created the database, they were separate from State Farm, they were based in Oakland, California.

Q Were you part of a group that had some training from State Farm with respect to manipulation of that database?

A Yes, sir, that's correct.

Q Would you explain that, please? And again, I encourage you to be brief.

A I went to the school, I got the training, the training was provided by the company's own trainers. I found it to be a superb tool. I came back from the training, I think it was a couple of weeks, and before I could utilize it on the job in

the office that we described, unit 160, a couple of days after I returned with some others who had been in the area who had gone with me, they pulled us into a closed-door meeting.

Q And what were you taught in that meeting?

[92] MR. SCHULTZ: Your Honor, could we have some foundation as to who was there teaching this?

THE COURT: Lay the foundation.

Q (BY MR. CHRISTENSEN) Who was present in the meeting, as far as you recall?

A As best as I can recall, the meeting was called by the divisional claims superintendent, his name was William Beenck, that's B-E-E-N-C-K, and he called the meeting, there were some of his subordinates there who were higher up the food chain than me, and then myself and some others who were in the same job description than myself were in this closed-door meeting, but there were probably more than five or six people in the room. The meeting took place in the conference room at the Academy Park claims office on South Wadsworth designated here as unit 160.

Q Stated briefly, what were you taught in the meeting?

A Mr. Beenck outlined, in part of their deal to acquire the Audatex computerized estimate system, they had made part of the deal to be able to obtain specific codes that could be used and inputted at the point of creating an estimate that would override and discount the pre-stored values that had been placed into the database that came from the Mitchell manual, which is [93] established as the bible in most automotive repair. And we were then taught the codes to override the pre-stored value in the system.

Q Did that result in lower estimates?

A It resulted in an estimate that gave the illusion of being complete and computerized generated, but the bottom line was oftentimes less than what had been pre-stored by experts in the database.

Q Okay, was this generally known, or was this a select group?

A Well, everybody in the room knew that was there. I was aghast that this was going to happen, and it became lunchroom chitchat thereafter, and who knows how many knows by now.

Q Okay, I'm going to skip some other things. I'm going to ask you quickly on one. Were you taught about making contact with a claimant who has an injury within 48 hours?

A We're actually taught to make contacts with the victims, whether we knew they had injuries or not, within 48 hours.

Q Were you told anything about what happens within 72 hours, as far as manifestation of injuries?

A Obviously with this admonition, and a lot of assignments, I'm now an outside adjuster, where I'm [94] driving out to people's homes or whatever to make contact, and I can't always make it within 48 hours because I'm handling a pretty heavy load, so I'd come back and say, "Why have I got to do this 48 hour thing?"

And I was admonished that sometimes, some injuries of some nature don't manifest themselves until after 48 hours, and they wanted me there in the living room asking questions with regard to injuries before maybe the injuries had even manifested themselves. So the testimony of the victims should later be used against them, should they begin treating for injuries sustained.

Q Okay, let me move to another area. You went to a number of schools, and you have letters on each one congratulating you for completion, which are part of Exhibit 66, and in the interest of time I'm going to skip those. Were some of the unfair practices that you've described not put in writing?

A It seemed to me that there were two sets of rules. There were those that were put in writing, and there were the informal rules. And the more adept you became at playing the company line regarding the informal rules, the greater your chances for promotion.

If you stuck clearly to what was in writing, then you weren't going to go very far, was my [95] impression. And there were rules and instructions that were given that were never put in writing, or if they were put in writing, I didn't see them, and they were at a desk the level above me. But they were verbalized, and they do, did exist.

Q Did some of your training at different schools involve issues of potential bad faith cases?

A We received bad faith exposure training, and I got it in a couple of places.

Q Okay. Did you observe practices at State Farm which had to do with altering or falsifying file documents?

A Yes, sir, I did.

Q Would you explain what was done there.

A Probably the best example I could give is what was called in the office as, quote, "purge the file." I wasn't, I remember as a junior adjuster, being handed a file that came back to me that I had started in, and had moved to some other reassignments, and I was told that this file was going to be a matter of litigation, it's going to trial, and that I was being given the file and told to purge anything that might be derogatory to State Farm or that might create exposure slash bad faith exposure for State Farm.

And I'd never purged a file before. I [96] didn't, at first I said, "What do you mean, purge the file?"

And they gave me an explanation, they said, we've got a claim activity log, which is a log of your contact with the players in the file, and they said, "This line right here that's in the middle of the page, that's pretty damaging to State

Farm, given our position. We don't intend to hand that over to plaintiff's counsel, I need you to rewrite this entire page and leave those two lines out."

And then they'd say, I remember the comment, it was Dave Peterson, who was my supervisor's supervisor, and he said, "Damn it, Bruce, when are you going to learn to put those kind of important comments on a buck slip in the file?"

Q Okay, explain what a buck slip is.

A These, if I could, in the interest of time, this is the days before stick-it notes, but it looked just like that, it wasn't sticky on the back, we would staple it to the claim activity log or to the file jacket, and it had a pertinent comment on it, but I was told to use these so that in the event a file went to litigation, and there was bad faith exposure, that myself and up the food chain, before it went to plaintiff's counsel, could go through and they could [97] purge these comments out of the file.

And Mr. Peterson said, "Damn it, Bruce, when are you going to learn that that comment, even though it's material to our handling of the file, goes on a buck slip, and not a claim activity log? And maybe if I make you rewrite enough of these to get those kind of comments off the claim activity log, you'll start using more buck slips."

And I suddenly realized a buck slip was a critical component to them, because it was a major component to purging the file before handing it over.

Q Okay. Were you actually directed to rewrite some files before they were produced to the opposing lawyer?

A The example I gave. I had a comment, I was new, I maybe didn't recognize it as a line that would create State Farm exposure, and I had to rewrite the whole claim activity log to eliminate one or two lines that they didn't like the looks of, before they handed it to plaintiff's counsel.

But the file went from me to my supervisor for his review of my purge, and then he was to purge, and then from there, if it had BI exposure, body injury exposure, it went to the BI department and they reviewed our purge, and they did their own purge.

[98] And I was watching this file move through the office, and it became evident to me that the thing was going to be pretty antiseptic by the time the other side got it.

Q Were you instructed to use different pens, different kinds of ink to rewrite the log?

A Yeah. Not different colors, but maybe different shades of blue so it didn't give, so it gave the illusion in my rewrite that it wasn't something contrived. But then again, sometimes -- That wasn't brought up often.

I remember that being mentioned a couple of times, because mostly what they're going to hand to counsel is going to be a Xerox. But I remember somebody making that comment, because I did have to rewrite documents several times until I got used to their buck slip program.

Q Okay. Mr. Davis, you're familiar with State Farm's good neighbor promise. Did you gain an understanding of what that was when you worked for State Farm?

A Gee, I wore the badge on my sweater, I wore it on my wind breaker, I had State Farm hats, I was insured with State Farm, I had bumper stickers on the back of my car. I think I understood the image they [99] were projecting.

Q Based on all you know, your experience at State Farm, your training, did State Farm have any intention of keeping the good neighbor promise to its policy holders?

MR. SCHULTZ: Your Honor, I object. Calls for this witness to speculate on what intent is, calls for a conclusion, lacks foundation.

THE COURT: Sustained.

MR. CHRISTENSEN: That's all I have. Thank you.

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[100] * * *

CROSS EXAMINATION BY MR. SCHULTZ:

* * *

[102] * * *

Q Okay. When you left -- Well, let me back up for a moment. You indicated that you worked for State Farm from 1978 to 1985; is that what you said?

A It's the best I can remember.

[103] Q Let me show you something that might help refresh your recollection. Just for dates. Is that your letter of resignation?

A Yes, sir, it is.

Q Okay, and what date does it bear?

A February 21st, 1984 is what's been stamped on it. The date that's typed at the top says, "Effective March 5th, 1984." I'm confused by that.

Q Let me show you another document that might help you overcome your confusion. Can you identify what that document is?

A Yes. It's one of the documents that I signed, and that Mr. Hartwell, Fred Hartwell helped me fill out as one of the termination documents that I described earlier in my testimony. And it's dated March, 1984. And I'm off by a year.

Q So you probably were actually employed from sometime in '78 until sometime in March of 1984?

A Yeah. I believe in the authenticity of this document.

Q Okay. Would you read what's at the bottom of the second page of that document, where you explain your reasons for leaving State Farm?

A I'd be happy to. "I see no future advancement potential at this time beyond my C-8 hyphen [104] MA-2 status," which was the job category that I had, that I was in. Standard saying in the office among those above my immediate supervisor is that, "You may get MA-3," which was the next slot above me, "when you pass the walk-on-water test."

"Will really miss State Farm, but must go for more challenge, opportunity, and more money, and I had a great supervisor."

Q Did you write that?

A That's in my handwriting.

Q Okay. Now, just above that, Mr. Davis, on the second page of that form, there are some boxes where you're allowed to put the reasons why you left State Farm, and rank them by the first reason, or the most important reason you left, the reasons that had no importance, and so forth. Now, can you tell the jury the reason that you identified why you were leaving?

A Well, I think I recapped it down here. The numbers in the boxes, I haven't seen them in years. I haven't seen this document since the day I -- Give me a moment, if I could.

Q Okay, take a look at it.

A Maybe I could reiterate it, answer your question this way. It's on a scale of 1 to 10, as to which things were -- Do you want to come around and [105] look?

Q Yeah.

A It's on a scale of 1 to 10.

Q Let me help you for a minute. It isn't on a scale of 1 to 10.

A I was looking up here, I'm sorry.

Q I'm asking you about this section, right here. You put a 1, and that signifies the principal, or one of the principal reasons for your decision to leave?

A That's correct.

Q Okay. Which reason did you identify as number 1?

A I made it very clear on the document that my main reason for leaving was my, that my opportunity for advancement had been stymied.

Q And what did you put number 2, "Was partially the reason for my decision to terminate"?

A My second reason was probably the obvious, and it was money.

Q Okay, and number 3 says, "Had nothing to do with my decision to terminate." Which box did you put the 3 in on this document?

A Consistent with my comments below, I said that, "My immediate supervisor had, and my ability to interact with him, did not play a role in my leaving." [106] In other words, I didn't leave because I hated my supervisor. I liked him.

Q Okay. And the form itself just said "supervisor," doesn't it? It doesn't say immediate supervisor.

A When I filled out this document --

Q I'm asking you what the form says, Mr. Davis.

A It says the word "supervisor," with a capital "S."

Q Thank you. And down below that, you said you would really miss State Farm, and you had a great supervisor. Is that true?

A That is true.

Q And in your letter of termination that you wrote to Fred Hartwell, dated February 21, 1984 that I just showed you, Mr. Davis, you didn't say anything about being required to do things that you thought were dishonest or unethical while working at State Farm, and that that was the reason you were leaving, did you?

A I had an interview with Mr. Hartwell for three hours --

Q Mr. Davis?

A -- that covered that issue.

Q Did you say anything in your letter to Mr. Hartwell that said you were leaving State Farm [107] because you were asked to do dishonest things?

A In my letter in writing to Mr. Hartwell, I did not make that a point.

Q Where did you go to work after you left the employ of State Farm in March of 1984?

A I was offered a job to work in a body shop that received a large amount of State Farm business.

Q And what was the name of that body shop?

A It's called Sam's Automotive, it's on approximately Oxford and Santa Fe in Denver, Colorado.

Q And the reason you decided to take that job was because Sam offered you, offered to double your salary that you were making at State Farm; is that right?

A Clearly that's one of the reasons.

Q And what was your salary at State Farm at that time, Mr. Davis?

A It was not enough. But it was -- I know that I was under $30,000 a year, and Mr. Schultz, I'm trying to remember, maybe $28,000-five annual salary. And Mr. Chavez offered me a figure that I remember to be in excess of $40,000. It may not have been exactly double, I'm just trying to remember.

Q Somewhere above forty, maybe below fifty?

A It was more than 28-five.

[108] Q Now, do you recall, Mr. Davis, that you were approached by Sam Chavez sometime before you actually decided to take that job offer, and that he spoke to you about coming to work for him?

A He'd approached me a couple of times to come work for him, and I remember a specific one that we discussed in my deposition.

Q Okay. And what did Mr. Chavez tell you how he had gotten to know about you?

A Okay. Sam's Automotive is a family business, Sam is a self-made millionaire who doesn't read or write. He's a hard-working guy, and he had heard from his sons that in the flow of business that was in this large body shop -- And I need to express the magnitude. We're talking about a body shop that generates $385,000 gross repair a month. This is a big operation, I'm being offered a management position. And his comment to me was, as he made the offer, that, "My boys tell me that over the three years --"

Q And his boys would be people that worked with him?

A That's right, his sons, who were part of the family operation, this is a very large operation, "Tell me that over the course of three or four years, as you've interfaced with us in doing damage estimatics on [109] big wrecks, the towings, the non-drivable towing, during the course of that period they have not been able to bribe you like the other adjusters, they've mostly been unable to entice you with is a sandwich and then you eat the evidence. And we've never been able to get you to overwrite an estimate or pad an estimate, like some of the other company adjusters."

And then he said, "You're the kind of man that I want working for me."

Q So he thought, based on his experience, or at least what his sons and other staff had told him, that you wrote an honest estimate on vehicles that needed to be repaired; is that correct?

A It was their impression that they could not get me to manipulate an estimate that would put more money in their pocket by me padding an estimate. In other words, writing an estimate higher than was necessary to complete a quality repair.

Q So he was saying to you, was he not, that he thought you were writing honest estimates, and that he couldn't bribe you; isn't that true?

A It had been his experience that I was not inflating estimates, was what he was trying to project.

Q Now, Mr. Davis, when you went to work for Mr. Chavez, you continued to have association with the [110] people that you had worked with at State Farm; is that true?

A Yes, and I knew that was going to be the case. This is the largest automobile repair facility in the area that's administered by the office I was leaving. It gave me -- Obviously I don't want to burn too many bridges where I'm leaving State Farm, because I knew I'm going to be working in with the same group of people in the morning, only on the other side of the fence.

Q And it would be to your financial, your employer's, at least, financial benefit to have somebody like yourself, who knew some of these people over at State Farm, and could deal with them when the body shop was doing repair work; would you agree with that?

A That's correct. In fact, Mr. Fred Hartwell, who was my supervisor, had known Sam Chavez for over twenty years. So there were other alliances that had existed before my entry into Sam's operation.

Q Okay. And isn't it true, Mr. Davis, that you were just as honest in your work for Mr. Chavez after you started working there, in handling repairs and repair estimates, as you had been while you were working at State Farm?

A I might answer it this way. Mr. Chavez --

[111] Q My question is, were you just as honest --

A I understood your question.

Q -- When you handled repairs?

A I understood your question. I was trying to answer it.

Q Were you just as honest in handling the repairs and the body work with Mr. Chavez as when you worked at State Farm? I think you can answer that yes or no.

A I'm not sure if I can. Mr. Chavez was a millionaire, and he wasn't insured by State Farm. So he wouldn't fall into the category I was told to look for at State Farm.

MR. SCHULTZ: I'd like to publish his deposition.

THE COURT: You may.

* * *

[112] * * *

Q My question says, "So did you have to deal with your friends at State Farm?" Your answer was?

A Just use a finger, right there?

Q Right there. "So did you have to deal with your friends at State Farm?"

A My answer is, "I sure did."

Q I say, "Okay," and you say?

A I repeat my answer, I wasn't sure whether you'd said okay, and I said again, "I sure did."

Q And then I said, "Did you have any problems with that?" And your answer was?

A And I said, "No. In fact, Mr. Hartwell was still the supervisor over the property damage unit that I had left, that had responsibility over the neighborhood --"

Q Are you reading this or not?

A I'm trying to. You're turning the page.

Q Let's start over again.

A "No. In fact, Mr. Hartwell was still the supervisor over the property damage unit of --"

Q Property damage?

A I'm sorry, property damage, not the word unit, "of that neighborhood, and he endorsed me being there. And I was as honest with them as I was when I [113] was on the other side."

Q And the other side means when you worked for State Farm, right?

A That's correct. My entire career with State Farm I don't remember ever padding an estimate, and that's what I meant when I answered the question.

Q Would you read your answer, please?

A Sure. "And many times I would correlate with Fred, it was after I had left their employ, about repairs, or maybe a supplement needed to complete a quality repair. And they trusted me," meaning State Farm trusted me, "even though I had left. If you notice on the page regarding my job description, I forget the number. If you could help me, I could turn to it quicker." And I'm asking for your help.

Q And then we go on to something else. So your answer during your deposition was that after you left State Farm and went over to work for Mr. Chavez, you were an honest worker there for Mr. Chavez, correct?

A I believe that I was.

Q And your testimony was that you were just as honest for Chavez as you were for State Farm, correct?

A They couldn't make me pad an estimate, and that's the issue I'm discussing.

Q Did it say anything about padding an estimate [114] in your answer, there, Mr. Davis?

A I don't know how much you've taken out of context, it's a 227 page document, and you've shown me four lines. But if I remember the gist of our conversation was, had started out with the body shop had had success in getting the other adjusters to write inflated estimates.

Q Mr. Davis, could you answer my question, please? Did the portion of —

A I'm trying to.

Q Did the portion of the deposition that I just read to you, and you just read to the jury, say anything about padding estimates with respect to your honesty?

A That segment that you pulled out of my eight-hour testimony did not.

Q Thank you. Mr. Davis, who were some of the other people that would have been in these meetings that you've talked about where verbal directions were given to do things that you claim were unethical or dishonest?

A If I could give you a specific one --

Q Give me the names, is what I want.

A Right, but there were several closed-door meetings, and I want to -- And not everybody was there in the same meeting.

Q Well, give me the names that you --

[115] A Okay, the meeting that I referred to earlier in my testimony wherein secret override codes were provided to staff so that we could create estimates lower than reality, in that meeting, in the room was William Beenck, who was the divisional claims superintendent, David Peterson was there, and he was the property damage superintendent, I believe Fred Hartwell was there, subordinate to those two individuals, and my immediate boss.

Also in that room were the other people who were going to have to use Audatex, and therefore needed to know the secret codes to create the illusion. So I was there, obviously, Stephanie Stout was there, and I believe --

Q And who was Stephanie Stout?

A She was an estimator, she estimated damage that came to the claim center.

Q So she had basically the same job that you did.

A At the time I might have had a promotion, but I'm not sure. But given my automotive background, despite my promotions, they still had me write estimates. Stephanie Stout

was there, a man by the name of Jack Hazelett would have been in attendance, and another gentleman by the name of William Klaes, [116] K-L-A-E-S, would have been there. And we would have --

Not everybody in that room had gone to the school with me, but I had come back and they were going to actually utilize me and some others who had been to the school to train the local staff to avoid the expense of sending everybody to Oakland for a couple of weeks.

They were leap-frogging off the knowledge I had gained while I was out of town, but we were all getting the admonishment of the use and utilization of secret codes together.

Q And the other things you've talked about, here, using appearance allowances in a way that you think is improper, using equivalent parts, or non-original manufactured parts --

A LKQ.

Q The testimony you've given about not paying actual cash value, those things, the competitions that you've talked about, all these same people would have been given these instructions that you've discussed, that is Stephanie Stout, William Klaes, Jack Hazelett, and Mr. Hartwell, Mr. Beenck, and Mr. Peterson would have either told them to do that, or been aware of it; is that true?

A They didn't all go on catastrophe team with me, so even though the --

[117] Q Well, forget about catastrophe.

A I wish I could, but I can't.

Q These documents that you've put up here.

A Uh-huh.

Q With the lists?

A Yes.

Q Is it your testimony that all those people --

A At one time or another.

Q -- have heard the same thing things you did?

A At one time or another, if they didn't receive the instruction with me as a collective group, given their job description, they would have had it one on one. And my interaction during the course of the year, they gave me the impression that they were getting the same orders, the same marching orders that I was getting. Whether they got them with me or whether they got them in another experience, I can't remember.

Q Mr. Davis, did you work your entire six years or so with State Farm in the Denver, Colorado area?

A Yes, sir.

Q You never worked for State Farm in any other state, or any other division?

A I had exposure to files from all the states in the three-state region, and interaction with the other adjusters, but I never left and worked for State [118] Farm in a geographic location other than Colorado.

Q Wouldn't it be true to say that the vast majority of all the work you did for State Farm was in the state of Colorado?

A I was in the Mountain States Region and in the state of Colorado. The superiors above Mr. William Beenck are housed in Greeley, and Greeley controls Utah, Wyoming, and Colorado.

Q Mr. Davis, let me ask you this. Were you ever assigned to work in any of the claims offices in Utah?

A No, but I did, was involved in some of their files from Colorado.

Q You never worked in Salt Lake City for State Farm, did you?

A I think I said that I never did.

Q Or Logan, Utah, or Ogden?

A During my time with State Farm, I never, my physical body was never in Logan.

Q Okay.

A But it's in the electronic age, my friend. Those documents, sometimes they needed Colorado assists, and we were there.

Q I want to write down some of the things you've talked about today. Appearance allowance, Mr. [119] Davis, that's one of them, correct?

A Yes, sir.

Q Mr. Davis, can you tell me if anybody involved in the Curtis Campbell accident who had State Farm insurance back in 1981 had any problem with an appearance allowance?

A I don't --

Q In that accident?

A I don't have first-hand knowledge of that.

Q Do you know if Mr. Campbell or Mrs. Campbell have ever complained with respect to that accident about appearance allowances? Yes or no? Do you know?

A I've never met Mr. Campbell in my life.

Q You don't even know who Curtis Campbell is, do you?

A The other day I saw a nice gentleman in a wheelchair being questioned through the glass. I'm assuming that's Mr. Campbell.

Q You didn't even know anything about the Curtis Campbell case until you saw an article in the newspaper in December of 1995, or January of '96; is that true?

A That was my deposition testimony. It was a newspaper that was going around the office. I did not seek out to be here.

[120] Q So your testimony would be that you have absolutely no knowledge of any appearance allowance issues involved in the handling of the Curtis Campbell claim up in Logan, correct?

A It's not exactly my testimony.

Q Let me ask you again, then. Do you have any knowledge that anybody made a claim that there was an appearance allowance handled on Curtis Campbell's car in the Cache County accident that's the subject matter of this case? Do you have any knowledge of that?

A I have no first-hand knowledge if appearance allowance damages was involved in the Campbell issue.

Q Thank you.

A Whether he was a target group is another story.

Q Mr. Davis, you've answered my question.

A Thank you.

Q Now, let's talk about the use of equivalent parts.

A By that, you mean parts that are being purchased from a junk yard.

Q That's the way you describe it, Mr. Davis.

A I need to delineate it. If you're talking about used parts from a junk yard, are you talking about new parts that are subquality from Korea?

[121] Q I'm talking about what was on the document that you looked at, and it said "use of equivalent parts."

A Okay.

Q Okay. Now, can you tell me, Mr. Davis, do you have any knowledge whatsoever that anybody involved with the Curtis Campbell accident up in Logan in 1981 has made any kind of a claim of a problem involving the use of equivalent parts in that accident?

A I have no knowledge on how the property damage in that file was handled.

Q As a matter of fact, do you know whether Mr. Campbell's car was damaged in the Logan accident case?

A I don't have first-hand knowledge of that.

Q Okay. Now, let's talk about the use of what you called non-OEM parts.

A Uh-huh.

Q Do you have any knowledge whatsoever, Mr. Davis, of anybody involved in the Cache County --

A I can maybe save the court some time, I have no knowledge of that.

Q Let me ask my question. Do you have any knowledge, Mr. Davis, that anybody involved in the Curtis Campbell accident up in Logan in 1981 has made [122] any kind of a claim that they've been damaged or harmed because someone, or State Farm suggested the use of non-OEM parts with respect to that accident?

A If they did, I don't know.

Q Okay, let's talk about the use of depreciation. Do you have any knowledge, Mr. Davis, that anybody involved with the Curtis Campbell case up in Cache County ever made a claim that they were treated wrongly by State Farm because State Farm tried to use depreciation with respect to any property damage to a vehicle in that accident?

A All I understand is that they didn't depreciate property damage. Maybe depreciated issues of liability, but --

Q Do you have any knowledge, Mr. Davis, that anybody involved with the Curtis Campbell case in Logan in 1981 made any sort of a claim against State Farm about depreciation?

A I have no first-hand knowledge of that principle being used in that case. I'm assuming, unless the vehicles involved were brand new and a couple of hours old, that principle probably existed, but I have no first-hand knowledge.

Q So you're assuming that State Farm probably took depreciation on Mr. Campbell's car.

[123] A I can't assume that, either, except that I, if it happened during a period of time- - As the date of loss, as I understand it, during the period of time when I was employed with State Farm, the damaged vehicles involved, some adjuster, somewhere would have gotten directive to attempt these plays to reduce cost per file.

Q Now, do you have any idea, Mr. Davis, do you have any knowledge whatsoever about whether anybody involved in the handling of the Curtis Campbell accident case up in Logan that happened in 1981 was involved in some kind of a competition involving appearance allowances, equivalent parts, non-OEM parts, or depreciation with respect to how they handled that case? Do you have any knowledge whatsoever about that?

A Only that the competition that I was --

Q Do you have any knowledge with respect to how the Curtis Campbell case was handled, and whether there was any kind of a competition by the people handling that accident case?

A I think I understand the question.

Q With respect to these four items.

A I will isolate my answer to those four items. I was led to believe that the competition that existed in my office existed throughout the Mountain States [124] Region. So those components may have indeed been involved in a case involving a lot of property damage.

Q Okay. So with respect to Mr. Campbell's claims against State Farm, do you have any knowledge that he has claimed that State Farm has damaged him with respect to the 1981 accident?

A That's a rewording of what you said before, so I want to listen carefully.

Q Just a minute, I'm asking you another question. With respect to the use of appearance allowance, equivalent parts, non-OEM parts or depreciation, do you have any knowledge as to whether or not Mr. Campbell has made that kind of a claim?

A I have no knowledge whether that's part of his claim.

Q You were shown a couple of your PP&Rs during your direct examination.

A Uh-huh.

Q Mr. Davis, was there any goal written in those PP&Rs that indicated you were supposed to offer less than actual cash value on total losses?

A That was agenda items that were discussed behind closed doors.

Q Was that written?

A And it was not written down.

[125] Q Was that written in your PP&R?

A It was never written in my PP&R. That's a document that several people are going to get copies of, and it was never there.

Q Now, with respect to these job performance reviews where your performance was evaluated, that was part of what was done with these PP&Rs; is that correct? Some goals were set, and then you would be checked to see how you were doing on those goals?

A Right. And part of the evaluation of how I was proceeding with those goals were some of the other documents that were put on the overhead that reflected in-office competition.

Q And it's true, isn't it, Mr. Davis, that there were a lot of other goals that were set for you, aside from just questions involving costs; isn't that true?

A Yes, sir, that's correct. It was the first agenda item, but it was not the only one.

Q It was the first agenda item, always, you say?

A Regardless of the order that it existed in writing, it was always the first item of discussion.

Q So even though it wasn't written first, you're saying it was always the first item they talked [126] about.

A That is absolutely my testimony.

Q Okay. Let's look at your performance planning and review, dated June, 1982, to June, 1983.

A Yes, sir.

Q Do you see that?

A Yeah.

Q And I believe that is part of Exhibit 122, if I'm not mistaken.

A Yes, sir.

Q What's the first item under the planning that is listed there as one of your goals?

A It says, "Effective --"

Q Do you want to hold it?

A Sure. "Effective July 1, 1982, Bruce will alternate monthly on the duty desk as an estimator. While on the duty desk, he will have to work quickly and properly budget his time to ensure the effective flow of claims assignments. He will not be allowed to engage in long --"

Q "He will not be able"?

A "He will not be able to engage in long, detailed telephone conversations. This training should prove to be very beneficial to Bruce."

Q Okay, let's turn the page. What's the second [127] item listed on your goal sheet, there?

A "While working the duty desk, Bruce will spend one day per week on the CSR desk in order to better learn this claims function."

Q What was the CSR desk, Mr. Davis?

A I can't remember for sure. I know what the duty desk was, it was like sergeant of the day, and I'm handling what's coming into the claims office right off the street.

Q Do you know what a CSR is?

A I believe it used to stand for claims service representative.

Q Okay.

A A Just another adjuster designation. I believe I was -- They wanted me sort of locking elbows with a couple of the more experienced ones in the office so I could learn from them.

Q Okay.

"This training will allow more flexibility to use Bruce as needed, either in Academy Park or the Denver service center." A couple of claims offices, and they apparently wanted to expand their ability to use me in more than one place.

Q Okay. Now, what does paragraph 3 say about what your next goal was?

[128] A Number three says, "Effective immediately Bruce is to implement a filing system for supervisory and informative memos. He has shown a tendency to read this type of memo once, and then throw it away. These memos should be filed for future reference."

Q Okay.

A Those are instructional memos about policies and procedures on particular files.

Q What's your fourth goal, there? Would you read that?

A Uh-huh. "Improvements need to be made in working relationships with fellow employees. Bruce tends to give the impression of technical superiority, which can lead to a negative reaction. He needs to be sensitive as to when he should talk less and listen more."

And you know, I still have a piece of that problem, as you've all seen. I'm a friendly guy, and I'm not afraid to talk. I probably should keep my mouth shut more often.

Q I'll stipulate to that.

A In which case I might not have ever ended up here today.

Q Mr. Davis, during the six years that you worked for State Farm, you had about four positions, as [129] I understand it. You started out as a junior estimator.

A I think that's what they called it.

Q And then you became just a regular estimator, or senior estimator. Correct?

A I knew I started as a junior estimator.

Q All right.

A My adding machine was a pull, and they wouldn't even give me one to plug in the wall.

Q Okay. And then you became a claims service representative; is that correct?

A Yeah, a CSR, I think you're right. And then a senior --

Q And then a senior claims service representative.

A As best as I can remember.

Q Now, during the entire time that you worked those six, approximately six years for State Farm, in all of those positions, you were working on property damage claims almost exclusively; is that correct?

A That was the major component of my job description, although it provided me exposure, if a file started out with property damage only, but then the person turned out to be hurt, then, indeed, I suddenly had exposure to a file that was now property damage and body injury also.

[130] Q And if it had some potential for a bodily injury claim being made, that file, the handling of the bodily injury aspect of the claim would be given to some other bodily injury claim handler in your office, correct?

A In fact, it was sometimes my decision, or my -- It was within my job description to do what was called flip BI. If I'm handling a file that appears at the onset to be property damage only exposure, and suddenly it appears that victims in the file have been injured, with personal injury, my instruction was to, quote, flip BI, and have the file sent to a unit that specialized just in body damage, excuse me, just in bodily injury.

But that unit was, to my desk, if this were the edge of my desk, I was in the property damage unit, and what was called the BI unit, or the body injury unit was right there. The lady that sat here was beside me for years, and to flip a

file, quote, BI, or to move it from property damage only to body injury exposure required filling out a form and handing it to her beside me.

Q And then she handled the bodily injury issues from there on in, correct?

A She might route it to her supervisor to [131] decide whether he wanted her to handle this particular BI, or whether he would route it on to another BI adjuster. There are also some files that started out BI, serious injuries they know right from the get go this person's hurt, and that file would actually come back to me temporarily to handle the property damage associated with the body injury claim.

I would do my portion of it, and then I would hand it back when my assignment was completed. And of course, during that course, I'm able to peruse her performance, and she's looking at mine, and so on and so forth.

Q You were never given an assignment, as part of your job duties, to evaluate BI handling of claims for compliance with State Farm practice and procedures?

A That's correct.

Q And you never handled a bodily injury claim, Mr. Davis, as part of your responsibilities that involved litigation of a lawsuit against the State Farm insured, did you?

A If a case was in litigation, I might be involved in it if I had done the property damage associated with the file. But as far as my administration --

Q Mr. Davis, and my question --

[132] A I'm trying to --

Q Did you not ever supervise or handle --

A I didn't --

THE COURT: Let him finish the question.

Q (BY MR. SCHULTZ) Your responsibilities didn't include the handling of bodily injury claims that you were involved in. You were not the person who was making decisions about settlement, correct?

A That's correct.

Q You were not the person who made decisions about whether to take a case to trial; is that correct?

A That's absolutely correct.

* * *

[133] * * *

Q (BY MR. SCHULTZ) Mr. Davis, you mentioned in your direct examination that when policy holders would come in to meet with you, oftentimes they didn't know exactly what coverages they had; is that correct?

A Yes. And from the questions they asked, that was evident, yes, that's true.

Q And they would have a little card, they might have a little insurance card that just had a bunch of letters on it?

[134] A Yes, sir, that's correct.

Q And the letters wouldn't tell them what coverages they had; is that correct?

A Not always. Or sometimes if it might, they wouldn't understand the scope of the coverage they'd purchased.

Q Okay.

MR. SCHULTZ: May I approach the witness, Your Honor?

THE COURT: You may.

Q (BY MR. SCHULTZ) Have you ever seen a card like that before, Mr. Davis?

A It's different than the ones that I remember during the time that I was there. The --

Q What is it?

A It looks like maybe a blank of a version of what I might have had. It has no other -- I mean it's a blank.

Q Right, it's an insurance card with nobody's name on it?

A Or coverages, or addresses, or anything else like that.

Q But is that an example of an insurance card?

A This is an example of an insurance card.

Q Something that an insured could carry with [135] them in a wallet or a purse or something like that?

A Yeah, it seems to have more information on it than the ones I remember during my time period with State Farm.

Q Okay.

A But this is a facsimile of an insurance card, albeit it's blank.

Q And does that card indicate the different coverages that are available?

A This blank card does have a alphabet on the back that gives one or two-word descriptions of what the alphabetical letter means in the way of a one or two-word coverage description.

Q For example, it says "A" and then it tells what A coverage is, correct?

A A or A-B.

Q Thank you. Let me show you another few cards. Have you ever seen cards like that before, Mr. Davis?

A This one here is a bit closer to what I remember was in most of the wallets and purses during the time that I was with State Farm.

Q Okay. Those are, again, examples of cards, but without names on them.

A That's correct. And it's been over a decade.

[136] Whether all the printing on these cards are the same as what I recall, I'm not sure.

Q What's on the back of these cards? Does it identify coverage types and explain the name of the coverage?

A It has letters of the alphabet on the back, with this one here seems to be a little briefer than the other one.

Q Okay.

A Then it also gives instructions on the back as to what to do if you're a policy holder, in the event of an auto accident.

Q Okay. Does it list things like, it says "P," and then next to that it says "P is no-fault"? Is that right?

A It gives me the impression that P equals no-fault.

Q Okay.

A I knew what that meant.

Q Let me show you one more, okay?

A Sure.

Q Have you ever seen a card like that before?

A I've never seen this format in my life.

Q Okay. What does it say on the front?

A It says, "Utah Insurance Card," and it has a [137] State Farm logo on the front. Sort of a shadow version, and also a laminated version, in two places.

Q Okay, on the back of that does it identify coverage types?

A Yes, it does. It provides additional instructions from the other stuff that you've seen. Obviously the cards have developed beyond the stage that they were when I remember them.

Q Okay. Do you recall when I took your deposition, Mr. Davis, that you told me that, you kind of chastised me, in fact, for not knowing that for thirty years B coverage at State Farm meant liability coverage? Remember that testimony?

A I remember being surprised that you were unaware that the use of the letter B coincided with a liability coverage. With you, yourself a well-known defense attorney with State Farm, one of your larger accounts.

You were questioning me as to the fact that you found it incredible, I think we described, a widow coming in the first time, not ever having a claim, that she doesn't understand what coverage she had coming into the claims coverage.

Q And you told me for thirty years B coverage was liability coverage in State Farm?

[138] A I remember mentioning B was part of the code that was used to describe liability.

Q Can you see what B coverage is?

A The one you've just handed me --

Q Can you answer my question?

A On this card you handed me it denotes liability with the letter A.

Q What does it denote liability on with that card?

A On this card, which is a much newer technological version, it shows liability coverage as A.

Q And on the first one I showed you, it showed it as A or A-B; is that correct?

A And that was the one that I remembered was available during the time that I worked for State Farm, and that --

Q There's not one card here that says liability coverage is denoted simply by the letter B, is there?

A Not simply by "B," but incorporating the letter B, yes.

Q Now, let me ask you about one of the other things you talked about this morning. The 48-hour rule. You said that you were supposed to contact people within 48 hours after an accident and get a statement from them, right?

[139] A If possible, but I definitely was admonished to create a 48-hour contact. Sometimes they would say, "You caught me at a bad time, can you call me back later?" And I would mark it as a contact and try to get back to them as soon thereafter. But I was admonished daily that 48-hour contact was the rule.

Q Now, Mr. Davis, do you know anything that would suggest to you that anybody attempted to use what you call the inappropriate use of the 48-hour rule with respect to the handling of the Curtis Campbell accident case in 1981 in Logan, Utah?

A I know that in 1981 there would have been a policy --

Q Do you know anything to indicate that anybody used the 48-hour rule inappropriately with respect to the handling of the Curtis Campbell claim in the 1981 accident?

A Only that it was policy.

Q But you don't know anything about how it was handled with Curtis Campbell?

A I was never involved in the handling of the Campbell case. As I've already testified, I was in Colorado.

Q Thank you. Thank you. Now, Mr. Davis, before you went to work for State Farm, you worked for [140] about two months or three months at a place in Denver called Interstate Transmission. True or false?

A That is true.

Q Okay. And then you went to work for State Farm, right?

A They approached me to submit an application.

Q And you eventually took employment with State Farm. True?

A Yes, sir. Yes, sir.

Q And when you left State Farm, then you went to work for Sam's in '84, correct?

A Yes, sir, that's correct.

Q Okay. And you stayed at Sam's for about one year; is that true?

A As best as I can remember.

Q Then you went to work for Rider Truck; is that correct?

A That's correct.

Q And you stayed there for about three years, right?

A I'm in their, one of their national claims offices, and I was there for about that time period.

Q Okay. Then you left Rider Truck and went to work in Maine for Snappy Car Rental; is that correct?

A That is correct.

[141] Q And also for a Chevron dealership in Maine, correct? Or a Chrysler dealership, excuse me.

A That is correct.

Q And then you left there in about 1990 and came to Utah, right?

A That's about right. It would be late summer, early fall.

Q When you came to Utah you started your own business, which was a public adjusting business, correct?

A Pretty much so.

Q And then in about 1993 or '94, you went to work for a law firm here in Salt Lake City, where you still work today.

A That would be my effective date, was July 1, 1994.

Q All right. And what's the name of that law firm?

A It is, at the time it had a different name but it's now called Larsen, Kirkham, and Turner.

Q Okay. So if I kept track correctly, since 1978 you've had eight different jobs up to this point in time; is that true?

A Yeah, not including the time I owned my own business, as you've outlined.

[142] Q I included that.

A Uh-huh.

Q As a public adjuster in the state of Utah, you worked for approximately four years in that kind of a job?

A Yeah, maybe a little bit longer, but that's about right.

Q And as a public adjuster, you were a person who handled claims for clients against insurance companies in general; is that true?

A Yeah, I represented individuals who had a claim against insurance companies for injuries sustained or property damage sustained, sure.

Q And you handled what's been identified here both as first-party claims, where your client was an insured who had a claim against his own insurance company, right?

A Yes, sir.

Q You handled those kind of claims?

A Yes, sir, I did.

Q And you also handled third-party claims, where your client was the person who was making a claim against the insurance company's insured, right?

A That's correct.

Q Okay. And during the time that you were [143] doing that kind of work, Mr. Davis, did you have occasion to settle third-party claims on a regular basis?

A Yes, sir, I did. I also handled third-party claims when I was with Rider Truck. So it's been, I've had exposure to that for years.

Q And you weren't a lawyer, correct?

A I was not an attorney.

Q And so in handling those third-party claims, your service that you provided was to try and arrange to investigate, and then to try to make settlements, right?

A And avoid a courtroom scenario. And many people desired that, and hired me because of it.

Q And were you successful in settling most of your claims?

A Yeah, I suggest that a large percentage of the clients that retained me as a public adjuster had a case, their cases settled informally, without litigation. But I also had the ability to pick and choose what kind of cases I was going to sign, and if it wasn't clear liability, and if the injuries, in my opinion, were not real, and if there wasn't sufficient property damage to justify what was being alleged, I wouldn't sign the business. So I had an opportunity to control what business I took.

[144] Q Mr. Davis, one of the procedures that you went through as a public adjuster in handling claims was a negotiating process.

A Yes, sir, that's correct.

Q And that negotiating process involved perhaps you making a demand, the other side making an offer, and the two sides working together to try and reach a settlement, correct?

A That's a good description.

Q And you don't have any problem with that process, do you?

A I think the process of negotiation is healthy.

Q Okay. Now, did there come a time, Mr. Davis, where you had to stop doing work as a third-party adjuster?

A That's correct.

Q And was that because a court in the state of Utah determined that --

MR. CHRISTENSEN: I'm going to object. This is going way beyond the area of direct, and it's now getting into interpretation of legal opinions, which we've stayed out of in this case.

MR. HUMPHERYS: May we have a conference, a side bar on this?

[145] THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. SCHULTZ) Mr. Davis, did a court of this state find that third-party public adjusting was the unlawful practice of law?

A They -- I was named in that issue, not for impropriety, but simply because the profession was later deemed to be the practice of law, and the license I'd been issued by the insurance commissioner's office was neutralized because of that court ruling. And I supported it.

Q And you never thought you were doing anything improper, even though it was later found to be the unlawful practice of law, correct?

A In fact I had a valid license from the commissioner's office that allowed me to do that. And it became a legislative

issue, and they threw it out, and the Supreme Court eventually ruled on it. But two years, approximately two years prior to that Supreme Court ruling, I pretty much volunteered or relinquished my license, as I was offered a position as an employee with Mr. Larsen's firm.

Q And was, that decision that you made was after a trial judge in this state had ruled that you [146] could no longer do third-party adjusting?

A Pretty much so. It was Judge Rokich, it was in this building. From my own first-hand knowledge the other public adjusters were not supportive of that judge's ruling. I was, and I stopped doing what the judge said to stop doing. Even though I was holding a valid license at the date of his opinion, I did honor the judge's ruling.

Q Okay. Now, as a result of that ruling, then, your next job was with Mr. Larsen's firm, correct?

A That's correct, yes, sir.

Q And your job there is as a legal assistant; is that correct?

A Yes, sir, that's correct.

Q And --

A I'm not an attorney, and I want to make that clear.

Q Yeah, I understand. Now, Mr. Davis, before you went to work for Mr. Larsen's law firm, as a legal assistant, in your work as a public adjuster, you had had some claims, had you not, against State Farm insureds?

A I had clients who had claims.

Q Right, that's what I mean.

A And I represented those clients.

[147] Q And when you went to work for Mr. Larsen did you take some of those claims with you so that his firm could then handle those claims against State Farm insureds?

A I notified all the clients the very next day, both by phone, if I could reach them, and in writing, of the ruling of

Judge Rokich. Many of them asked where I was going, I told them I was no longer licensed, but I did tell them where I was going, and I told them that if they desired representation, of which they now had none based upon that ruling, if they were interested, Mr. Larsen would review their case and see if he wanted to represent them.

Q Okay. And --

A And that did include some cases involving State Farm.

Q And is it true, Mr. Davis, that Mr. Larsen's law firm presently handles plaintiff's claims against State Farm insureds?

A Yeah, we have files in the office that involve State Farm, and State Farm insureds who have been negligent.

Q And you also have claims in your office right now where your clients are suing State Farm directly also; is that true? Yes or no?

[148] A I'm deliberating the question. The files in litigation are not within my job description, so -- But to the best of my knowledge there are still some files in the office being administered by the attorneys that are in active litigation with State Farm involved. I think so.

Q And there's been some testimony in this case from other witnesses, Mr. Davis, that attorneys who represent people who are making claims usually get paid on a contingency fee basis. Do you understand what that means?

A Yes, sir, I do. That means that the law firm is going to be paid a percentage of a gross settlement, or a verdict, and that their getting any kind of payment for their efforts is going to be contingent on some kind of settlement or judgment.

Q And wouldn't it be fair to say, Mr. Davis, that in your present employment, the law firm that you work for generates income from, or attempts to generate income from cases it files on behalf of clients against State Farm or against State Farm insureds?

A I -- Since State Farm is a very large insurer in Utah, it would be safe to assume that there are cases in the office that are being handled by the law firm that I work for that involve State Farm on a [149] contingency fee basis.

Q Thank you.

A Although we do defense work also, like yourself, Mr. Schultz. But we do do plaintiff's work, which I think you do not.

THE COURT: Just answer the question.

THE WITNESS: Okay.

Q (BY MR. SCHULTZ) I think I'm not the witness today, Mr. Davis.

A I understand, I apologize.

Q Mr. Davis, do you, in your present job, sometimes go to the news media to try to make State Farm look bad in cases that your office is handling?

A There have been circumstances in the office where we have been approached by the media on issues that were, that the media deemed newsworthy.

Q Let me ask you a specific question. Do you recall a client that you had by the name of Verdun Nicholas?

A I remember the client Verdun Nicholas. That he --

Q Do you recall that Mr. Nicholas became a client of the law firm that you now work for also?

A I remember his case went into suit, and suit was filed by the firm that I work for.

[150] Q And suit was filed against State Farm, correct?

A He was retired, fixed income, and suit was filed --

Q And do you recall being quoted --

MR. CHRISTENSEN: Your Honor, I'm going to object to this. This file hasn't been produced for us to review, that I'm aware of. If he's going to ask him about a State Farm file, I'd like to see the file.

MR. SCHULTZ: Well, Your Honor, it goes to this witness' bias. I don't think I need to show him the file. I'm just going to ask him about things he said that were in the newspaper, and what he said.

THE COURT: Overruled.

Q (BY MR. SCHULTZ) Now, Mr. Davis, do you recall being quoted in a newspaper article the Salt Lake Tribune sometime in 1995 about the Verdun Nicholas case?

A I remember being interviewed, and I remember they took a portion of what I said, and I can't remember if they quoted me correctly.

Q Okay. Well, in substance, did you tell the reporter that you thought State Farm --

A Can I take a look at it, Your Honor? It's been a while since I've seen it.

Q Certainly.

[151] A I do remember the basics of the case.

Q Did you, in substance, tell that reporter that Mr. Nicholas was not being treated properly by State Farm with respect to some medical bills that he thought State Farm ought to be paying?

A I remember, in the interview from the reporter, being asked the substance of the beef on this case.

Q And was part of the substance of that, Mr. Davis, that you said State Farm was not treating Mr. Nicholas properly because they were not paying all of the medical bills that you claimed they should be paying for him?

A Okay, I remember responding by saying it is Mr. Nicholas' opinion that he's being focused on as a fixed income retiree, and that he has incurred medical bills that he feels should be paid off the State Farm policy that he's had for thirty-some-odd years.

Q Are you saying that you told the reporter that you didn't think they should be paid?

A I will admit that I believed the client, but I represented my statement to the press carefully, and it was Mr. Nicholas' impression that his bills should be paid by his insurance company.

Q Was the --

[152] A And they weren't being paid.

Q And it was the position taken by the law firm that you work for that they should be paid, and that State Farm was acting improperly by not paying them. That was why you sued State Farm; isn't that true?

A I didn't, but the law firm that I worked for, based upon Mr. Nicholas' circumstance, suit was filed.

Q And did you represent Mr. Nicholas as a public adjuster on that claim before you went to work for Mr. Larsen's office?

A That's correct. But we weren't getting anywhere with the case because they weren't paying bills.

Q Are you going to look at that or not?

A You were going to ask me about specific dialogue.

Q No, you said you wanted to look at it. Do you want to or not?

A I'll hold it as long as you're going to ask me questions about it, if I could.

Q All right. Now, was Mr. Larsen, who is your boss, was he the attorney of record in this case?

A I believe so.

Q Okay. And you have confidence in his ability?

[153] A Mr. Larsen is my employer, and I have confidence in him.

Q Were you quoted correctly, here, in this article, Mr. Davis? This is in quotes, it says, " 'They play a non-payment game to put financial pressure on the auto victim to

accept a less-than-fair settlement,' said Bruce Davis an insurance analyst in Larsen's Salt Lake City firm, and former State Farm auto damage adjuster. 'The game ends up costing the insurance company's policy holders,' he said."

A Can I look -- That's a different article. Could I look at that also?

Q No, it's the same one.

A Okay, point to me where you're reading.

Q It's right there.

A Okay.

Q Were you quoted correctly there?

A If I could reread the statement. "They," when I say "they," I mean State Farm, " 'They play a non-payment game to put financial pressure on the auto victim to accept a less-than-fair settlement,' said Bruce Davis, an insurance analyst in Larsen's Salt Lake City law firm and a former State Farm auto damage adjuster. 'The game ends up costing the insurance company's policy holders,' he said." That's pretty [154] close to what I said, Mr. Schultz.

Q Okay. Now, Mr. Davis, are you aware that Mr. Larsen voluntarily dismissed that case on behalf of Mr. Nicholas against State Farm, following the taking of Mr. Nicholas' deposition?

A I'm aware of the fact that this law firm withdrew from representing him, and I'm aware of some of the reasons why.

Q You're aware that the case was dismissed, aren't you?

A I'm not sure how it finally shook out.

Q Did you contact the Salt Lake Tribune and report that to them?

A Well, I didn't contact them in the beginning, and I didn't contact them at the end. They contacted me, and asked me for my input based upon the facts that I had at the time of the interview, and I stand by that position.

Q Mr. Davis, who kept the log at the Pueblo catastrophe?

A What kind of log?

Q Well, you said there was a log that was kept that showed exactly how much you had saved by using appearance allowances. Who was it that kept that?

A Okay. We were required to keep -- They gave [155] us work stations, we were required to keep the log out in the open on our work station.

Q Are you saying you kept the log?

A I think I testified earlier that a lot of the input on the log with regards to cost savings or shortages, or my terminology, of gouging, was kept there, and I maintained the log.

Q You wrote it yourself; is that what you're saying?

A It was reviewed by staff, by my superiors.

Q I'm just asking, did you write the log?

A Yeah.

Q Mr. Davis?

A If you were to obtain the log, most of the entries would be my signature.

Q All right.

A Or my handwriting.

Q But everybody that was there would have known about this.

A Everybody there who was in my job description.

Q That worked for State Farm?

A Had a log. We all had a log.

Q So they would all know that this was going on?

[156] A Absolutely.

Q And would all of the other property claim handlers at the catastrophe duty know about it, as well? As far as you can tell?

A I don't know about all of them, but the ones that were in my proximity, we were given a log, we maintained the log under, supervisors watched us maintain the log and reviewed the entries

in the log. It was kept out in the open, and the form that was provided was not one of my own creation, they gave me a blank form.

THE COURT: Just a minute, Mr. Christensen has risen.

MR. CHRISTENSEN: If State Farm has the log, I'd like to see it. We haven't seen it.

MR. SCHULTZ: Is that supposed to be an objection?

MR. CHRISTENSEN: No, I'd like to see the log.

THE WITNESS: It's the same log they use for other catastrophe teams. It should be an easily accessible document.

Q (BY MR. SCHULTZ) How many catastrophe teams did you work on, Mr. Davis?

A I lost stomach for it after one.

[157] Q You worked on one catastrophe team in your entire career; isn't true?

A Yes, sir, that's correct. I turned down other opportunities and refused to go.

Q And when you refused to go, you weren't disciplined for that, were you?

A I disagree with that.

Q Let me ask you this. Weren't you promoted right after you refused to go on a second catastrophe duty?

A I was actually put in a job description where I wouldn't have to deal with that quite so much.

Q Wasn't it a promotion, Mr. Davis?

A On paper, I guess it could be called that.

Q Now, your goal for appearance allowances that you've identified here on the projector, was $100 a month; is that right?

A I testified earlier that on that PP&R format it was represented that the $100 a month was a goal that I'd chosen for myself. But that was, indeed, not the truth. The goal had been picked for me, and I was asked to acquiesce and call it my goal.

Q But whoever made it, Mr. Davis --

A It wasn't me.

Q -- the goal was $100 a month.

[158] A Yes, sir, that's correct.

Q Is that right? Now, how much property damage did you handle in a year?

A Probably at the -- Keep in mind, with the promotion they were moving me away from handling the property damage stuff and --

Q Let me short circuit it. Didn't you testify it was $6 million a year, sir?

A There was a time period where there was at least that much flowing across my desk on an annual basis, and that involves body shops also, along with the other assignments I've described, with working with people coming into the claims office.

Q Did you or did you not handle $6 million a year in property damage claims?

A I think at the height of my volume it might have been that high. That's a figure that was given to me rough by Fred Hartwell.

Q And that was, would average out to be about $500,000 a month; is that true?

A You know, it might go that high. And when I gave you that figure I'm talking about all the vehicles that are out there that are under repairs, with estimates with my name on it.

Q Okay. Well, do you have a problem with these [159] numbers, Mr. Davis?

A I just -- Remember, we're discussing them eleven, twelve years later, and it's the best I can recall.

Q That's what you said --

A In my day I had a tremendous amount of volume of cars that were under repair with estimates that I had written.

Q So if you handled $6 million a year and it averaged out to $500,000 a month, your annual goal for appearance allowances would be met if you had $1,200 in an entire year, correct?

A Based upon that first goal. But as we've seen from documents provided, they weren't satisfied with that, they kept increasing the goal even if I exceeded it.

Q And if we took Mr. Christensen's example that he put up here on the board, his hypothetical, if you handled one appearance allowance the way you've described it there, you would have met your goal with one appearance allowance for two whole years, wouldn't you?

A I'm a little confused by that.

Q You remember the example that he put up here on the board, sir?

[160] A I think so, but what would help me, is if I could have a published copy of my deposition --

Q Well, I'll go on. I think the jury knows what I'm talking about. You don't have any real problem with the fact that some repairs are made by the use of equivalent parts, do you?

A No, sir. The issue would be, with me, disclosure, and that a quality repair was going to be obtained.

Q And so, as a matter of fact, in some instances it's to the owner of the vehicle's benefit to use equivalent parts; isn't that true?

A In my deposition I gave specific examples where the use of quality used parts might be to an advantage.

Q And are you aware of the fact, Mr. Davis, that State Farm provides a guarantee on those equivalent parts to the people that they are, whose cars they're used on?

A During the time in question, 1981 that we're talking about, never were we ever to extend a guarantee regarding the use of equivalent parts or used parts or any part.

Q Is it your testimony, Mr. Davis, that during the entire time you worked for State Farm you did not [161] know that State Farm provided a guarantee on equivalent parts?

A They didn't make the part. And we were never instructed to extend a guarantee.

Q Is it your --

A Just let me finish my sentence.

Q Is it your testimony that you did not know, during the entire time that you worked for State Farm, that State Farm provided a guarantee on the equivalent parts it used? That's a yes-or-no question.

A I have no recollection of a guarantee being told to me that I was to pass on to their policy holders.

Q All right.

A There might have been one from the manufacturer, but certainly not one that State Farm was going to underwrite. I was never told.

Q It's not your testimony that it's wrong to take depreciation, is it?

A I think the principle is correct when it's used properly and disclosed.

Q You talked about written and unwritten policies, Mr. Davis. With respect to these policies or practices, I guess that you claim were improper, is it your testimony that those things that you say you were [162] told to do were not included in any of State Farm's manuals regarding the handling of property damage claims?

A Some of the instruction I was given, some of the behind-the-closed-door stuff that I've outlined here today, was not listed in a written policy manual that I was provided.

Q Thank you.

A It was done behind closed doors, exactly as I described. You will not find a comment about decals and, deer and trout and salmon decals comment written anywhere, probably, in State Farm's paper.

Q Mr. Davis, with respect to the Audatex computer pre-stored data on repair estimates?

A Yes, sir.

Q Is it your testimony that there is never a time when manual entries are appropriate?

A No, I never said that. The word "never" is absolute. There are times when it may become necessary to complete a quality estimate that you may have to override. But it shouldn't be, in my opinion, and it's my testimony today, that you shouldn't be overriding pre-stored information that has to do with flat rate times for labor operations prices and so on and forth, to manipulate a database.

[163] Q But if there were times that you needed to override in order to prepare a quality repair estimate, wouldn't you need to know how to override the code?

A Some of the codes would be necessary to do a manual override. And some of the codes I only used to be able to override pre-stored information. I can't remember too many of the codes. I don't know if I can remember any of the codes.

Q You don't have any problem with an insurance company trying to find out if a person has been injured within 48 hours of the claim, do you?

A No, sir.

Q Thank you. And you don't have any problem with an insurance company trying to get to claimants or insureds who have claims as quickly as they can?

A As long as the motive is pure, I don't see a problem with it at all. Most people with their house devastated by a tornado like to see us arrive with our State Farm wind breakers on, and they needed us, and they depended on us to help them put their lives back together.

Q Mr. Davis, do you know how much State Farm paid out in claims on the Pueblo catastrophe, total?

A I remember it being announced in the meeting where I received my beach blanket for being [164] number two, but I can't -- The only two figures I remember, frankly, are my own performance and the guy who beat me, and the fact that he got some other kind of gift and I got a goofy blanket.

Q So your answer is you don't know.

A I can't recall total payout. That was handled by a level above me anyway.

Q Did State Farm give you a lot of training in the property damage handling?

A Yes, sir, they did.

Q Did they send you to seminars and other schools to learn proper estimating techniques?

A I was often singled out because of my technical background and my performance.

Q And you were sent to schools that weren't run by State Farm; is that correct?

A And they would pick up the tab and the hotel room and the meals, and they would sponsor me.

Q So would you say in general that State Farm had an extensive training program for you in the area that you were handling claims?

A There's no question that they spent a lot of effort in my training.

Q Now, Mr. Davis, did there come a time when you were a claim service representative that you decided [165] you wanted to not do that job any more, and instead go back out into the field?

A There was a time in my career, as I had become disenchanted with this company and what I was being asked to do, that I, in writing, requested a demotion, knowing that that demotion would put me back in a position where I was prior, that would provide me a company car, or at least the use of a car during the day, it would put me out in the field, it would give me flexibility, autonomy, the use of my own time.

And I told my supervisor that I'd had enough of this, and he said, "Bruce, you're one of the best field people we ever had." He connected with a couple of his superiors, and in a matter of days, my own requested demotion was authorized. It became evident that I was no longer willing to play, and that was going to stymie my growth with the company, and that's what I outlined in my good-bye papers with State Farm.

Q Mr. Davis, do you deny that one of the reasons you asked for this change was because you really weren't performing, that the job of a senior claims service representative was not something you were able to handle?

A That's absolutely not the truth.

Q Okay, let me show you this letter, here, or [166] memo. Can you identify what that is?

A It is my request to be demoted to the position that I just described, to give me the outside and flexibility, autonomy.

Q Did you say in your memo there that you wanted this change because you were disillusioned with the company and were tired of playing games?

A This comment, or this document, along with the other --

Q Did you say that, Mr. Davis?

A In this document -- I'd like to read it for the record, could I? Since it's here.

Q Go ahead and read it.

A "It's my desire that I be reassigned to a field estimatics position as soon as feasibly possible." I'm sorry, this is the end of my career, and I remember, it brings back some memories.

"The responsibilities of my current CSR position find me in an area where I have little interest. I would rather be functioning in an area in line with my educational background and my technical experience." And Mr. Hartwell knew that I wanted to get outside so I could find another job, and he knew why I was leaving. And a six-year career was down the toilet because of that letter that I wrote with my own hand.

[167] Q Is it true, Mr. Davis, that when you left State Farm --

A These are not tears of sadness, these are tears of anger that I was painted into a corner.

MR. SCHULTZ: Mr. Davis.

THE COURT: Confine your testimony to answering the question.

THE WITNESS: Sorry, Your Honor.

Q (BY MR. SCHULTZ) Is it true, when you left State Farm, you left because you felt like you wanted to be an honest person and you couldn't be honest at State Farm?

A I could no longer carry the banners of the company of State Farm. I'd lost my stomach for what they were telling me to do.

Q And you thought that what they were telling you to do was dishonest, and you were going to get out of that and not do anything that was dishonest any more; is that true?

A It was my feeling that I wanted to stop doing those things, and I'm not saying that -- I'm no saint, and I make mistakes too, but I wanted to stop making those. And as my note said, as soon as feasibly possible. And I was --

And they demoted me per my request, they gave [168] me everything I asked for. They gave me the car that I wanted, they gave me everything. And I told Mr. Hartwell I was going to use the autonomy and the flexibility outside to find other employment, and he knew it.

Q And the other employment you found was a job that paid twice as much as State Farm?

A I had several offers when it became evident that I was looking, and the best offer is the one I took.

Q Mr. Davis, is it true that for three years after you left State Farm, you did not file income tax returns?

A That's not true. All my income tax has been filed.

Q You deny that you failed to file for three years?

MR. CHRISTENSEN: Your Honor, this is improper impeachment, it's also something that certainly should have been addressed with the court, and this is not the appropriate setting. I don't know whether what he's accusing this witness of is true or not, but in fairness, it should have been something addressed before it was presented this way.

MR. SCHULTZ: Well this man has claimed --

[169] THE COURT: Approach the bench, counsel.

(Side bar conference held out of the hearing of the jury.)

THE COURT: Objection sustained.

Q (BY MR. SCHULTZ) Mr. Davis, is it, to your knowledge is it standard in the insurance industry to repair cars with used parts when appropriate?

A Yes, sir, it is.

Q Okay. Is it your position, Mr. Davis, that discussing different types of policy coverages was part of your job duty as an estimator?

A Not so much as an estimator, but the interpretation of the policy came with my next couple of promotions.

Q Okay. Do you know what CAPA certification of parts means?

A A CAPA?

Q Uh-huh.

A There are a lot of parts certification groups. That one I'm not familiar with.

Q Are there different opinions, Mr. Davis, on what the actual cash value of a vehicle is?

A Yes, actual cash value has some components that are pretty much standard, and then there's certainly items for debate on other areas.

[170] Q Mr. Davis, was the use of non-OEM parts disclosed in the estimates?

A Sometimes it was, sometimes it wasn't. Even in the handwritten estimates. And then when we went to computerized estimates, it was in a two-letter code that was difficult to understand. And we were schooled on how to take advantage of that ambiguity so they weren't really sure what was always going on.

Q Mr. Davis, after you left State Farm's employment, did you go to the insurance commissioner of the state of Colorado and report to the commissioner that you thought these practices that you've described today were unfair, improper, unethical, and dishonest?

A Yes.

Q And make a formal complaint?

A I actually had a couple of visits with him. I knew him, I knew him on a basis away from work, we belong to the same church, and I did have a couple of visits with him. That's correct.

Q And did you ever file a formal complaint?

A I figured, face-to-face visit --

Q Did you ever file a formal complaint?

A I figured a face-to-face visit with the commissioner was enough.

Q Did you ever file a formal complaint?

[171] A He never handed me a form.

THE COURT: Just answer the question yes or no.

Q (BY MR. SCHULTZ) Your answer is no; is that correct?

A I never filed a formal complaint.

MR. SCHULTZ: Thank you.

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Davis, you've been shown some documents from your personnel file. Have you ever seen the whole personnel file?

A No.

MR. CHRISTENSEN: Could we see that, Stuart? The whole personnel file?

MR. SCHULTZ: I don't have it here.

MR. CHRISTENSEN: You don't have it?

THE WITNESS: As a rule, policy was that employees were not allowed to see their personnel file. Maybe a couple of components of it, typically the bad news that maybe was going in. But it's never been in front of me before.

Q (BY MR. CHRISTENSEN) You were asked, Mr. Davis, about a case that the firm that you work for now handled. Verdun Nicholas case?

[172] A Verdun Nicholas.

Q Let me ask you about another one.

A I wish you'd ask me more about that one.

Q Are you aware of a case that the firm you're with handled involving the loss of the ashes of the husband of a widow where State Farm had made an offer at one level, and after counsel was retained that offer changed?

MR. BELNAP: Your Honor, excuse me.

THE WITNESS: I am aware --

MR. BELNAP: Could I approach the bench?

(Side bar conference held out of the hearing of the jury.)

THE COURT: Objection sustained.

MR. CHRISTENSEN: Nothing further.

THE COURT: You may step down, Mr. Davis.

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